

Juvenile Justice: Let the Sun Shine In?

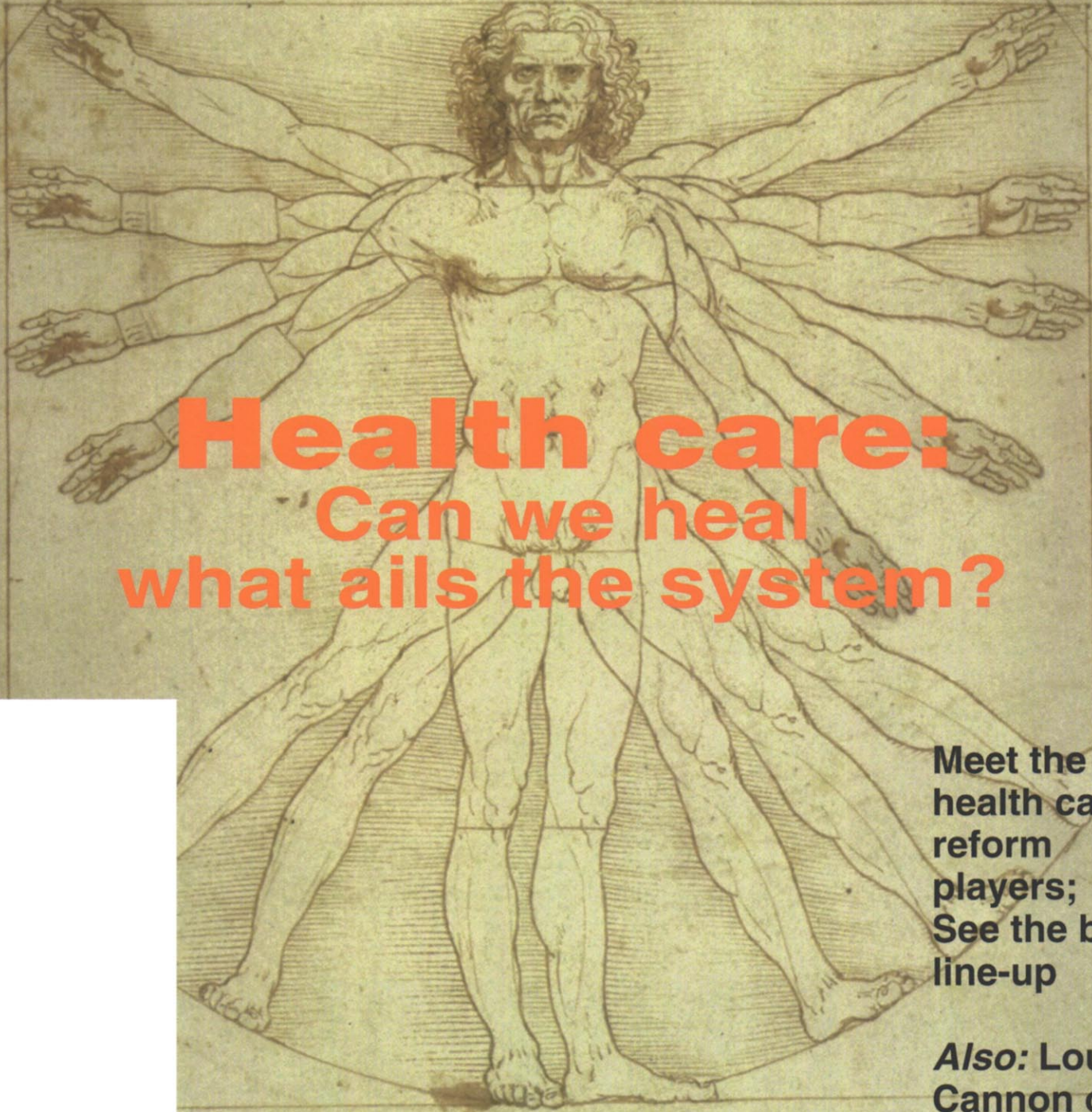
california

JOURNAL

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Health care:
Can we heal
what ails the system?

**Meet the
health care
reform
players;
See the bill
line-up**

**Also: Lou
Cannon on
two-tiered
welfare**



This is not the face of multiple sclerosis.

It's the face of Connie Pierce. She's married to her high school sweetheart, has twin daughters and a job she loves. She has also been fighting multiple sclerosis (MS) for a decade. She credits family support, a sense of humor and advances in medicines from America's pharmaceutical companies with helping to dramatically slow the progression of her MS. Pharmaceutical company researchers continue to make breakthroughs and won't stop until there's a cure. So people like Connie can live and love and laugh for years to come.

America's Pharmaceutical Companies

Leading the way in the search for cures

california JOURNAL

September 1999
Volume XXX, Number 9

Upfront

Talking Points

Southern Exposure

Rostrum

State of the State

Washington Perspective

Nostalgia

Just the other day, a stack of envelopes arrived at our midtown Sacramento offices, each inked by hand and addressed to *California Journal* editors. Inside were gold-sealed invitations from former Governor Pete Wilson and his wife, Gayle, to a ceremony on the East Lawn of the Capitol. The occasion was the unveiling of Wilson's official portrait, *plein-air* reception to follow.

Now this type of invitation hardly rises beyond the realm of the commonplace in Capitol circles. Our editors – only mildly flattered, if that – know full well that they were invited because a) the former governor hopes for a respectable number of people to be on hand to witness the historic event and b) the former governor hopes for a friendly recounting by the press of his two terms in office.

Cynthia H. Craft

Not being noteworthy for what it was, the invitation became noteworthy around the office for what it *wasn't*. It wasn't anything we expected to see anytime soon from the present day gubernatorial administration, which seems about as likely to build bridges to the Capitol press corps as it is to hold an open-house for the public that installed it.

So far, Governor Gray Davis has forged a reputation as cordial only to those who he believes can boost him politically or his campaign coffers financially. A crude assessment? Maybe, but when the most negative governor in recent history – whose wedge issues unified public opinion and votes against him and his party – outshines the current governor in the department of accessibility and civility, that's noteworthy.

8 Health care fixes slow in coming

If our health care system is broken on a broad scale, why is fixing it so piecemeal? One reason is because special interests in Sacramento are all fervently guarding their slices of the pie.

By Tom Philp



20 Welfare rule bucks up rights

When the U.S. Supreme Court knocked down California's plan to give newcomers less cash assistance than residents, it reaffirmed individual rights.

By Lou Cannon



23 Hushed-up juvenile justice

Juvenile courts try to protect children by limiting access to proceedings and information. But a new push in the California Legislature is exploring whether these courts – like any other branch of government – might not benefit from doing more business in the watchful eye of the public.

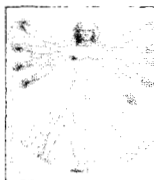
By Max Vanzi



34 Robe Rage Reversed

For years after the ouster of California Supreme Court Chief Justice Rose Bird, voters confirmed judges by slim margins. But last year's election marked a turning point, with Chief Justice Ron George sparking an uptick in voter confirmation rates.

By Charles M. Price



By Dagmar Thompson
with apologies to Leonardo DiVinci

Fields of (long) Green. If you're going to be a member of the California Assembly, you need to start acting like one. So, apparently, believes Audie Bock, the Legislature's lone Green Party member. The lawmaker who made a show of riding the train to Sacramento had her Capitol office phones turned off last month for a spell — not to save money, but to allow for the rolling out of new carpeting. Forest green carpeting ordered by the state. Now, it seems the freshman lawmaker is looking to see green someplace other than her floors. This month, Bock scheduled her first Sacramento fund raiser — “A Midsummer Night's Green” — and it was definitely not one of your “pay what you can, bring a can of food for the homeless” kinds of affairs. Slated for the outdoor garden at Sacramento's tony Virga's Restaurant, participants were offered the opportunity to munch on sushi, in tribute to Bock's fluency in Japanese and former life as translator to legendary Japanese film director Akira Kurosawa. The price tag for this little outdoor soiree is strictly high-end — \$1,000 per person.

Wallowing in Paulagate. Whenever a party faces what it perceives as a difficult legislative contest, it is always tempting to go out and find a “name” and, if it's a celebrity name, so much the better. But there's little doubt the GOP establishment 'round Pasadena's way was keeping one would-be celebrity candidate well past arm's length. For the newest member of the field of contenders for the 44th Assembly District is none other than Susan Carpenter-McMillan. Name not ring a bell? Well then, you didn't watch much

CNN during the late 1990s. McMillan was the public spokeswoman for Paula Jones, the Arkansas state employee whose sexual harassment lawsuit against President Bill Clinton made her name (and eventually her nose) a household word. No doubt McMillan will find dealing with such banalities as class size and the width of the 710 a comedown after the national media rush she enjoyed in the Jones case. But the person who is really sweating this latest development is a fellow running for another office in the same general area. U.S. Representative James Rogan (R-Glen-dale) figures to spend a whole lot of time and energy next year trying to make people forget about his central role in the presidential impeachment saga. The last thing he needs is someone out there picking the scabs of the Clinton scandals.

Bucking the trend. You'd think the last thing someone like U.S. Representative Loretta Sanchez (D-Santa Ana) would want to do is put herself crosswise with the leadership of her party. Sanchez, after all, sits in a swing district and will always be in GOP crosshairs after her controversial win over then-U.S. Representative Bob (“B-1 Crazy Dude”) Dornan in 1996. Yet, Sanchez decided last week to nibble the hand that feeds her by endorsing the primary challenger to a 10-term incumbent Democrat. Sanchez told the *Orange County Register* she plans to endorse and give assistance to Senator Hilda Solis (D-El Monte) in her bid to unseat veteran incumbent Representative Marty Martinez (D-Monterey Park). Sanchez says her decision to back Solis is personal, citing their friendship and Solis' consistent support. But

Animal farm.

When people head for the water, be it a beach or a lake or a babbling brook, they're usually looking for a little peace. But talk about water at the Capitol and the only peace you find is the volatile Chula Vista Democrat, state Senator Steve Peace. At a committee hearing last month to discuss the current state of water sales in California, Peace took the opportunity on several occasions to throw a few jabs at his favorite political punching bag — the massive Metropolitan Water District. In criticizing the giant water wholesaler's behavior during San Diego's effort to buy water from the Imperial Valley — and thus reduce the city's reliance on MWD — Peace repeated the oft-uttered euphemism attached to many veteran public water



officials: water buffaloes. At one point Peace lauded San Diego's move several years ago to revamp its water leadership and throw out its old guard of buffaloes. But all this buffalo bashing eventually prompted one senior member of the herd — Kern County Water District's Tom Clark — to speak up on the water establishment's behalf. Displaying political grace and humor Clark, a 30-year veteran of the water wars and self-avowed “member of the Friends of the Water Buffalo”, said he took offense to the senator's attacks on “white middle-aged men” like himself and all their hard work. To which the volcanic Peace smiled and replied, “From now on, I will refer to them as water gazelles.” 🏠

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nothing gets under leadership's skin quite like having a member of the club stick a finger in the eye of another member of the club, even if that club member (Martinez) is an, ummm.... underachiever. Sanchez insists she won't face re-creminations because of her stand, and that may be true, given that she has her independent constituencies among women and Latinos. But she may have to do a little bowing and scraping down the road if she expects full support for what promises to be a tough 2000 campaign against anti-bilingual activist Gloria Matta Tuchman.

In the chips. In the category Nautical Terminology, the Jeopardy answer is: "Shakedown Cruise." The correct question: "What do you call a Gray Davis road trip?" According to the governor's latest campaign finance reports, Davis raised an astonishing \$6.1 million during the first six months of 1999 which, last time we checked, was an off-year. A fair portion of this cache of cash was collected at fund raisers conveniently scheduled to coincide with Davis' official gubernatorial functions. The list of contributors reads like a special interest "Who's Who," with only gun manufacturers and tobacco companies conspicuously absent. Many contributors, such as those from the agricultural and insurance communities, wouldn't have given Davis the time of day before. Now that he's governor, however, they're giving him not only the time, but the timepieces. The old standbys haven't deserted him either. The largest single contributor during the period was A. Jerrold Perenchio, owner of the Spanish-language Univision and a contributor to the 1998 Davis campaign (as well as that of GOP rival Dan Lungren). The new campaign reports offer a little insight as to why it's been so difficult to writing any kind of consistent vision out of the new governor. Who's got time for vision when there's all that money to be raised?

Meltdown. When politicians meet with newspaper editorial boards, the custom and practice is to try to make a good impression. These, after all, are major opinion leaders who are in a position to help frame a public official's public image. Apparently, Governor Gray Davis has adopted a novel approach to editorial boards: go postal. Meeting with the *San Francisco Chronicle* editorial board last month, Davis managed to commit three "cardinal sins" of politics. He picked a fight with someone who "buys ink by the barrel" by ridiculing the *Chronicle's* placement of the story about his signing of the assault weapons ban. He then compounded that sin by assailing their coverage of his special-interest fund raising as cheap ... er, shoot. And then there was the *coup de grace*. Davis told the Chron that the California Legislature is obliged to rubber stamp his personal agenda – whatever *that* agenda may be. Exactly what Davis hoped to accomplish with this bit of vituperative venting is a mystery. But we do know he got himself a long round of statewide, nay, even national media ridicule. And he made the already-touchy job of mending fences with his party in the Legislature a whole lot tougher. "Our job is to pass legislation," Burton told the *Associated Press*. "Those people [the Davis administration] can go [perform a physical impossibility upon] themselves, all right?" 🏠

Correction: Due to an editing error, a utility surcharge (*Demanding Cleaner Power*, August 1999) known as the "Competition Transition Charge" was inadvertently attributed to the California Energy Commission. It was in fact imposed by the California Public Utilities Commission.

"If you laid out all our laws end to end, there would be no end."

— Arthur "Bugs" Baer
newspaper columnist

umbrage

Case Study: Horror stories galore

By now, HMO horror stories are common enough that you could make a pretty lively evening of swapping the spooky tales around a campfire. Here's another one to add to a repertoire of frighteningly illogical health care conundrums: The practice of offering free cancer screening to low-income folks — but no hope of follow-up care once the disease is detected.

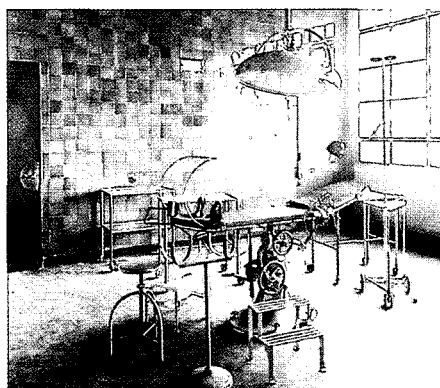
This is what California will face next year unless money is nailed down to extend the life of a fund for women of little means whose breast and cervical cancer is discovered during free screening. Since the early 1990s, federal and state officials have extended the no-cost detection to women with scant or no insurance. But until 1993, when the Breast and Gynecological Cancer Treatment Fund was established, there was no pot from which to cover early treatment. Now the fund is scheduled to run dry by December 2000 — unless, of course, a task force formed to prevent that from happening can find a solution. In the process of pushing two bills in the Legislature (AB 40 and SB 1154) and educating the public and policymakers, the Breast and Gynecological Cancer Treatment Task Force members hope to find benefactors to help resuscitate the fund. Then maybe they can do away with that cruel punchline at the end of the story.

— Cynthia H. Craft

Excerpts: Mary, Mary (not) quite contrary

Pardon us for doing a double take while thumbing through our July/August issue of the California Manufacturers Association magazine. There, in full color, and with a soft-focus filter usually reserved for aging Hollywood sirens, is a photographic portrait and feature-length profile of state Resources Secretary **Mary Nichols**, who, in a more liberal Democratic administration, might be classified as more of a foe than a friend of manufacturers. After all, **Governor Gray Davis'** appointment of Nichols, with her solid environmental pedigree, was heralded by lefties who hoped for a payback-era to compensate for two terms of former Republican **Governor Pete Wilson's** policies. But this is the age of shades of Gray, and while characterizing Nichols as a bedfellow of Big Business would overstate things, she — like her boss — clearly shuns sharp black-and-white ideological divisions for the fuzzy line down the middle between two opposing special interests. It's a tough territory to stake out, as one risks alienating both sides by forging compromises none is entirely happy with, but it's clearly the road most traveled in this administration.

— Cynthia H. Craft



Quotables.....

"The devil had that money long enough. It was about time we got our hands on it."

— The Reverend Lou Sheldon, founder of the Traditional Values Coalition, of \$156,000 that gambling interests paid his son to lobby against new, competing card clubs.

Tips & Tricks:

Winning the interview game

With every spin of term limits' revolving door, another greenhorn arrives at the state Capitol brimming with enthusiasm but lacking, perhaps, in a certain *savoir faire*.

Enter the gray-flannel-suits to slap some sense into these misty-eyed rookies who, soon enough, will face the brutal reality of being interviewed by a TV, print or radio reporter.

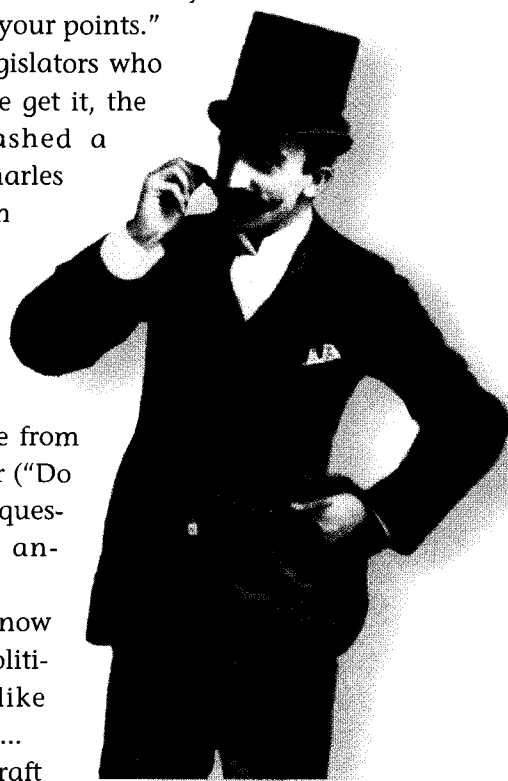
Here are some tips such consultants pound into freshman legislators, courtesy of the communications firm Fleishman Hillard, schooling new lawmakers in "Winning the Interview Game" at a recent National Conference of State Legislatures powwow in Indianapolis:

- To prepare for an interview, "Develop messages — two or three things you intend to say whatever the questions."
- "Determine the one point you want to get across."
- "Know what you want to say and use whatever questions you are asked to say it...."
- "...along the way, you can actually address the questions put to you or not, as you choose...."
- "Just don't get so fixated by the questions you are asked that you forget to make your points."

And, for legislators who still didn't quite get it, the presenters flashed a quote from Charles DeGaulle ("I am now ready to give the answers I have prepared to your questions") and one from Henry Kissinger ("Do you have any questions for my answers?").

So now we know why so many politicians sound like broken records....

—Cynthia H. Craft



By the numbers

.....

The Currency of politics

\$8 million:

Amount Governor Gray Davis collected in fundraisers since his November 1998 election.

\$3.1 million:

Amount of surplus, unspent campaign funds Davis had in his account when he took office January 1, 1999.

\$6.1 million:

Amount Davis collected in fundraisers since he took office January 1, 1999 to June 30, 1999.

\$1.2 million:

Amount, by comparison, raised by former Governor Pete Wilson in his first six months in office in 1991.

\$100,000:

Amount Davis collected in a 2 1/2-hour private dinner with a handful of hospital executives.

\$200,000:

Amount Davis collected at a small reception of California Chamber of Commerce members.

\$250,000:

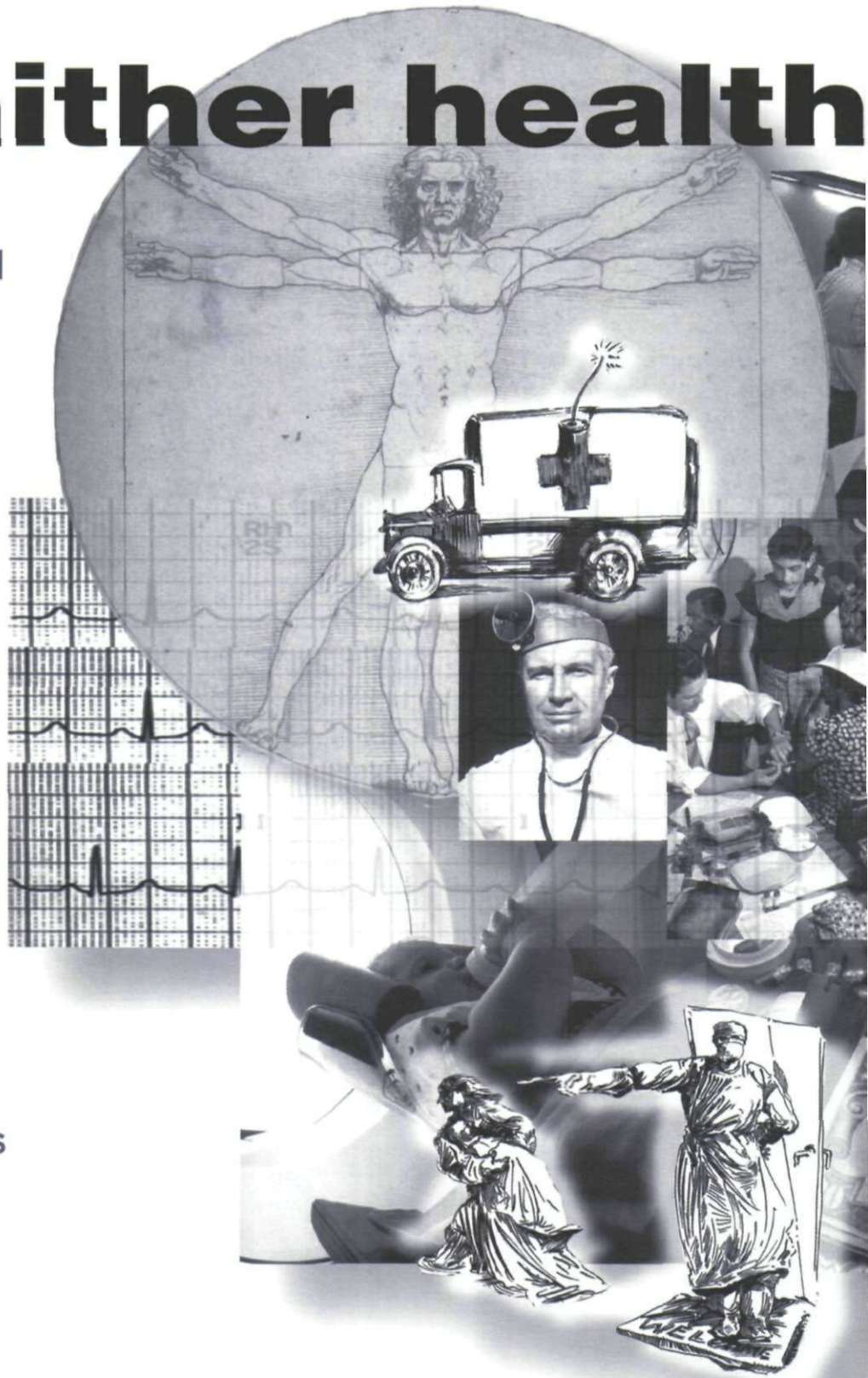
Amount Davis collected from media mogul A. Jerrold Perenchio.

Source: Governor Gray Davis Committee, via the office of the California Secretary of State.

Whither health

If the need for tackling broad-based reform head-on is tops in the mind of the consumer, why isn't it at the apex of the agenda for California's Legislature and Governor Gray Davis? The answer lies in the realities of a system that focuses on small fixes, protecting the flanks of political contributors and forging compromises between competing interests — rather than taking on the totality of a problem.

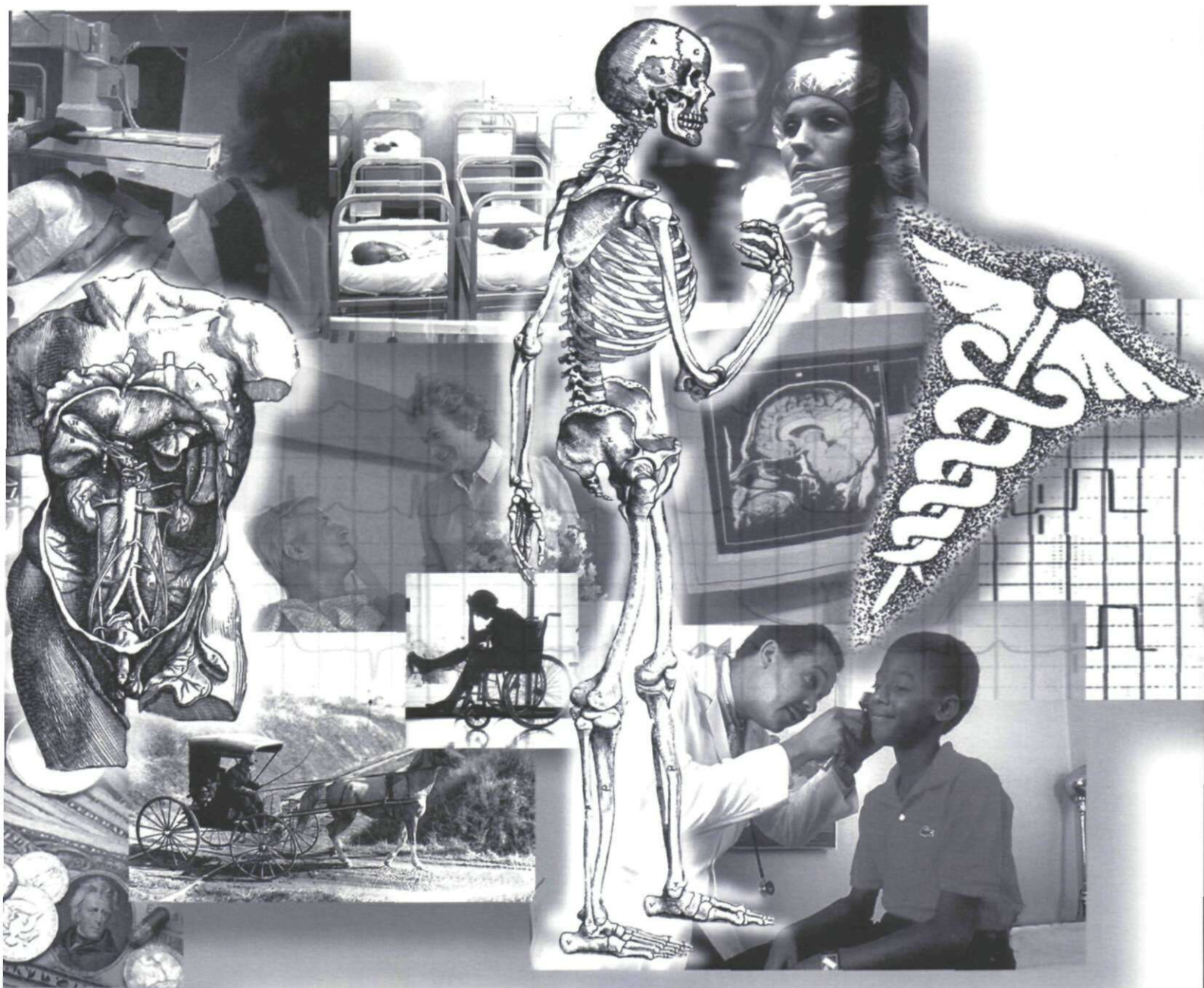
By Tom Philp



Steve Thompson, the chief lobbyist for the California Medical Association, identifies two primary illnesses plaguing the state's health care system. First, there is no health care system for 7 million Californians because they have no insurance. And there is a growing financial crisis for doctors as their medical groups struggle to provide care under the budgets provided by health plans.

Ask Thompson which of these two problems ended up dominating

care reform?



the CMA's political agenda this year, and the seasoned Capitol veteran does not hesitate in his answer. Neither.

This year for the CMA, health care reform took a back seat to the agenda of trial lawyers, who were seeking to adjust as high as politically possible the long-maintained financial caps on malpractice lawsuit damages in California. "I am not hoping that this becomes a permanent part of our work activity," says Thompson, of his organization's focus on issues tangential to broad-brush reform.

The CMA's priorities, perfectly understandable given the threat costlier lawsuits would pose for its members,

nonetheless reflect the broader political problem for efforts to truly reform the state's health care system. When it comes to health care reform, there isn't necessarily a correlation between the focus inside the Capitol and the actual flaws outside in the real world that need fixing.

"I've always thought that the politicians have their priorities wrong. I still do," said Emery "Soap" Dowell, a retired health care lobbyist who has been active in Sacramento health debates for 40 years.

A \$100 billion-plus assemblage of public and private programs run in part by 500 hospitals, 1,250 nursing

**"I've always thought that the politicians
have their priorities wrong. I still do,"**
— Emery "Soap" Dowell, a retired health care lobbyist

homes, 48 health maintenance organizations, 75,000 doctors and a handful of giant purchasers, California's health care system is no easy machine to overhaul. It is mind-numbingly complex in every facet, from its financial structures, its technology, and its many subcultures to its layers of government.

Yet few issues in life are as intimate, or important, as the relationship with one's healer. And when that relationship is either damaged or nonexistent, as is the case all too frequently these days in California, health care quickly evolves into health politics. "With the possible exception of education, there is no issue that is on more voters' minds than health care reform," said Gale Kaufman, a political consultant who helped lead five Democratic legislative campaigns last year. "Neither national leaders nor state leaders have solved the problem."

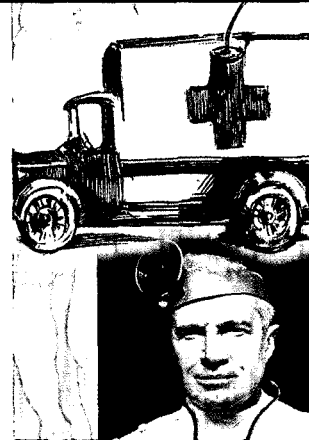
Yet there has been no shortage of attempts to try. By the count of the state Senate Insurance Committee, legislators this year wrote 52 bills that proposed some new mandate for private health plans. Not to mention a sepa-

rate list somewhere in the double digits to change various public insurance programs.

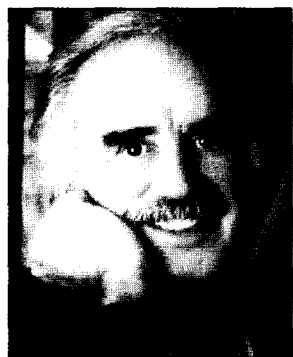
Not a single one of the bills approaches, even sketches, the kind of comprehensive, everyone-has-a-doctor system of health care that has proven so elusive, both at the state and federal level. "The political system has fallen back on very modest incrementalism," said Dowell. "There is progress," concurs Thompson of the CMA, "but it is exceedingly slow."

Meanwhile, the health industry itself continues to evolve at a rapid, even unnerving, pace. These samples illustrate the volatility of California's healing trade:

For more than 2 million mothers and children on welfare in California, the care system today is nothing like it was just a few years ago. Now welfare families in most major cities must choose between competing health plans rather than pick any clinic or doctor willing to treat them. In pure numbers, this changeover ranks as the largest, and



Who's Who in the Health Care Debate



**State Senator
John Burton
(D-San Francisco)**

As Senate President pro Tempore, Burton has to walk a fine line between his desire to see health care reform enacted and the staid, go-slow nature of the governor. In a recent well-publicized squabble with Governor Gray Davis over the pace of reform bills, Burton told Senate chairs to disregard

any pleas by administration staffers to slow down the process. Burton has been meeting with Assembly Speaker Antonio Villaraigosa (D-Mt. Washington) to determine the size and the content of the legislative package.

**Beth Capell, chief lobbyist
Health Access California**

Health Access has been a major force in the health care reform debate since Capell came on board in 1994. The



**Maria Contreras-Sweet, Secretary
for Business,
Transportation and
Housing Agency**

Contreras-Sweet, who reportedly has the governor's ear on health care, has lobbied hard to keep the state's regulation of health plans under the Department of Corporations,

organization represents a broad range of consumers. Formed in 1987, Health Access is considered the leading consumers' group in the health-care debate, and Capell its leading voice, although the governor has yet to include her in his discussion sessions.



fastest, migration from traditional fee-for-service medicine to managed care in welfare history.

The groups of doctors that care for most health plan patients in California, as Thompson is all too aware, have experienced some spectacular financial peaks and valleys. Two publicly traded companies, FPA and MedPartners, anchored in California their ambitious plans to develop stables of physicians coast-to-coast. Two years ago the darlings of Wall Street, they began to collapse in seas of red ink when cash infusions from rapid expansion could no longer mask a fundamental mismatch between ongoing revenues and expenses.

The managed care plans, in comparison, have been stable — but hardly from the perspective of watchful consumers. Kaiser Permanente, long one of California's most solid health care institutions, lost half a billion dollars in the last two years. A strategy of luring more enrollees by lowering premiums and ramping up expensive marketing campaigns backfired as costs skyrocketed, causing Kaiser to hike premiums to big employers, such as the state, more than its competitors did.

Northern Californians may remember Foundation Health Plan, which started as a small, nonprofit venture by some Sacramento physicians before it evolved in the mid-1990s into one of the state's most aggressive for-profit health plans. Angering doctors with its hardball fee-nego-

tiating tactics, expanding operations to encompass everyone from Los Angeles welfare families to European business executives, Foundation abruptly consented to being swallowed up by a Southern California rival, Health Net. The financial gulp created such financial and organizational problems for the giant new company, with more than 2 million California enrollees, that the company had to recruit new leadership.

Ironically some of the most cautious Californians of them all, senior citizens, willingly flocked into all this managed care turmoil. It was simply too financially attractive compared to the traditional Medicare system, California's last bastion of fee-for-service medicine. One in every three seniors has been lured into a health plan by its coverage of prescription drugs and low co-payments for medical services. Now seniors worry about how long the plans will continue to offer these enhanced benefits as Washington cuts back its payments.

It is against this never-ending backdrop of constant change that both Californians and their lawmakers have judged as flawed and heartless today's health care system. Peel away the various sub-issues, and essentially two fundamental problems confront Sacramento. One is a crisis in confidence for those who have health insurance. The other is a lack of access to any health care for those who have no insurance. The challenge is how to make insur-

which she oversees. Appointed to the post in January, Contreras-Sweet is a former member of the board of Blue Cross, one of the state's largest health insurers.



James "Jamie" Court, advocacy director for the Foundation for Taxpayer and Consumer Rights

Sometimes caustic and always opinionated, Court represents consumer groups concerned with access to health care and has criticized the governor for not including more

consumers in his health-care reform sessions. FTCR is closely associated with consumer advocate Ralph Nader, who also has openly criticized the governor's handling of health-care reform. The organization backs state Senator Liz Figueroa's (D-Fremont) SB 18 and SB 21 that would allow consumers harmed by HMOs to sue.

C. Duane Dauner, president of California Health Care Association

Dauner represents more than 700 hospitals, health systems, physician groups and health care entities in the



state and has participated in the governor's meetings on health-care reform. The author of *The Health Care Solution*, Dauner opposes higher health-care costs that ultimately could put hospitals out of business.

Governor Gray Davis (D)

The ultimate gatekeeper in the health care reform debate, Davis has tried to stem the flood of reform bills making their way through the Legislature, contending that the health care industry is "teetering." He recently convened two meetings that included legislators, HMO representatives and some consumer advocates, but has not revealed his own position on the complex topic. Davis has been accused of trying to slow down the legislative process by convening these meetings, which some key players have refused to attend. Some speculate that Davis could suffer his first leg-



ance better for those who have it without increasing its costs to the point that employers bail out of providing insurance and thus increase the swelling ranks of the uninsured, which are growing by one estimate at a rate of 50,000 every month. This is the underlying political tension facing Sacramento, one that has yet to be resolved.

The have-nots, the uninsured

California's health insurance is nearly 25 percent cheaper than the national average and a whopping 40 percent cheaper than in the Northeast, according to a survey by the giant health care consultant Milliman and Robertson. One would think that with insurance so comparatively inexpensive, few companies would skip buying it. Think again.

California in one survey ranks 46th among the 50 states in the percentage of residents who have health insurance. More than one in every five Californians has no health insurance. In Los Angeles County, more than 40 percent of those who work for a living have no health care coverage.

"In a booming economy, employers are dropping coverage," said Thompson. "It concerns me."

Why? The reasons are many, says E. Richard Brown, director of the UCLA Center for Health Policy Research, which meticulously tracks the trends of the uninsured. There is the conversion from defense-oriented jobs that typically offered health insurance to the service/retail jobs that don't. And the fastest growth in the population is of

groups that traditionally have lacked insurance — immigrants with little education. "And when we talk about lower prices in California, it is still a lot of money," said Brown, too much for employers who pay minimum wage. "We're talking about \$1,800 to \$2,000 for an individual per year and \$4,000 to \$6,000 to cover a family."

California attacks the problem with more than \$20 billion worth of Band-Aids. In other words, no single program comes close to addressing the issue. The biggest is Medi-Cal, the state/federal program to care for welfare families, poor seniors and the disabled; another is Healthy Families, a fairly new program to care for children near poverty; another is the Health Insurance Plan of California, a purchasing pool for small employers that leverages from insurers better rates than if they went out on the market by themselves.

"It is an inefficient system, an inequitable system, a system that is fragmented," said Kim Belshe, head of the California Department of Health Services during most of the administration of Governor Pete Wilson. Close to a billion dollars is spent on paperwork verifying the eligibility of Medi-Cal enrollees, a gauntlet that likely accounts for why about a million eligible Californians simply do without. Another billion dollars goes to hospitals to help pay to treat the poor.

If that money were redirected to preventing health problems in the first place, Belshe is convinced the cost to society would be far cheaper.

This year's main approach to the uninsured was to

islative override if he vetoes one or several health-care reform bills certain to land on his desk before the end of the 1999 session.

State Senator Liz Figueroa (D-Fremont)

Chair of the Assembly Insurance Committee in 1998 and a current member of the Senate Health and Human Services Committee, Figueroa is described as a "perennial" figure in the health care debate. She first made an impression in the Assembly with her 1994-95 bill to eliminate "drive-by" maternity stays of 24 hours or less as required by some HMOs. Currently, the bulk of her legislation is aimed at health care reform; Figueroa's SB 18 and SB 21 would allow consumers to sue their HMOs and are making waves in Senate committees. Her bills also would create a new regulatory agency within the Department of Corporations to oversee health plans and would require that medical decisions be made only by doctors,



not administrators.

Assemblyman Martin Gallegos (D-Baldwin Park)

A chiropractor by profession, Gallegos chairs the Assembly Health Committee, which has had the heaviest agenda of any policy committee this year. The chairman since 1996, Gallegos has been known to listen intently to consumer testimonials during committee sessions. His background in health care issues includes a stint on the state Board of Chiropractic Examiners and an appointment in 1992 to the Senate's Task Force on Medical Cost Containment in Workers' Compensation.



Steve Thompson, chief lobbyist for California Medical Association

Thompson is a former legislative staffer who has served Assembly speakers from Jesse Unruh to Willie Brown, Jr. and by all accounts is a heavy-hitter in legislative circles on physicians' issues. Thompson explained his conspicuous



**"If you ask 100 people what they mean
by managed care,
you get 100 different definitions."
— Mark Smith, President of California Healthcare Foundation**

make one Band-Aid bigger. The Healthy Families program was expanded to qualify children in families making up to 250 percent of the poverty line, up from 200 percent (more

than 135,000 of the 560,000 eligible children have been enrolled). The CMA and a coalition of health organizations had been hoping to redirect a half-billion dollars in tobacco settlement funds toward further expanding Healthy Families and other public programs. Instead, Governor Gray Davis wanted the money for the state's general fund. "We were very disappointed," said CMA's Thompson.

Finding a solution for the 7 million Californians without health care is something that "no one, as far as I can tell, has claimed to come up with the answer for," said Mark Smith, president of the California HealthCare Foundation, the Oakland-based philanthropy that focuses on Medi-Cal issues. "If you're a politician and you're in the business of solving problems, you don't take on problems you can't solve." So the political effort has focused on a health reform field that for legislators must seem like a

target-rich environment — those loathed HMOs.

The haves: Reform for the insured

About 18 million Californians have health insurance that can be described as managed care plans. What exactly is managed care? "If you ask 100 people what they mean by managed care, you get 100 different definitions," said Smith. "It is a synonym for the establishment, the way things are, the structure of American medicine."

Technically, managed care defines a broad array of insurance products that, as the name defines, attempt to manage one's care rather than simply pay one's doctor. The least restrictive form of managed care is known as a preferred provider organization (PPO). A patient can see any doctor who has a contractual relationship with the PPO, a contract that, unlike traditional fee-for-service, settles most rate issues in advance. The most restrictive form of managed care is the traditional HMO, which either has its own exclusive staff of physicians such as Kaiser, or contracts with various groups, such as PacifiCare or Health Net. These "network" HMOs typically require enrollees to see physicians within those specific groups. Some HMOs offer plans that allow enrollees to see physicians outside



absence from recent health-care reform meetings to the *San Francisco Chronicle* by saying "We had already conveyed our position to the administration." The CMA vigorously supports bills that would require medical decisions to be made exclusively by doctors.

Assembly Speaker Antonio Villaraigosa (D-Mt. Washington)

Along with Burton, Villaraigosa has tightened the reins of Assembly chairs and demanded that any leadership on health care reform come from him rather than the governor. Villaraigosa is especially concerned with the Hispanic



community's lack of access to health care.

Walter Zelman, president of California Association of Health Plans



Zelman, who represents 38 of the state's HMOs, has called for a moderate, incremental approach to health care reform. Having served as Senior Health Care Advisor to President Clinton from 1993-94, Zelman endorses certain aspects of reform, such as the formation of a new managed

care regulatory agency and bills requiring HMOs to pay for medical second opinions. He strongly opposes legislation to mandate new HMO coverage for mental illnesses and contraceptives, which he believes will drive up the cost of medical care. He participated in the governor's first meeting on health care reform in mid-July and is the author of *The Managed Care Blues...and How to Cure Them*. 

— Farrah McDaid

"The biggest issues, I think, are access. Better access, timely access and cutting through what appears to be an ever-increasing bureaucracy to get to your doctor."
— Gale Kaufman, political consultant

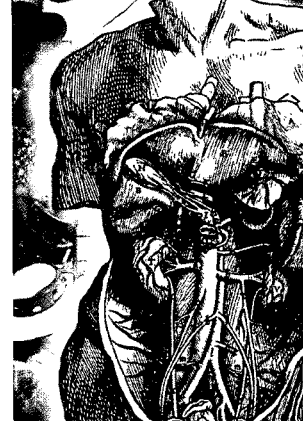
those groups for an additional fee, somewhat similar to the PPO.

All these abbreviations and coverage iterations are Greek to many Californians. They translate into restrictions that many see as hazardous to their health. "People don't like the fact that they can't see the doctor of their choice," says Kaufman, the Democratic political consultant. "The biggest issues, I think, are access. Better access, timely access and cutting through what appears to be an ever-increasing bureaucracy to get to your doctor."

Underscoring a growing concern and angst over health care's direction are national survey results from the Henry J. Kaiser Family Foundation that reveal nine out of 10 doctors care for patients who have experienced a denial of care. Even the HMO industry realizes it has a problem on its hands. An "obvious need" is "what to do about giving consumers a greater level of confidence in managed care," said Walter Zelman, president of the California Association of Health Plans. Zelman isn't your ordinary pro-

business cheerleader for the HMO industry, given his solid liberal credentials as the former California director for Common Cause before heading to Bill Clinton's White House, where he worked on the failed effort to enact comprehensive national health reform. "Our concern is not that there's an emphasis on managed care reform, but that the reform will go too far, thereby increasing health care costs more than necessary to solve a problem," said Zelman.

The bills aiming to expand access for those in HMOs seem to have three or four general approaches. There are bills that impose new mandates on the insurers. There are bills that empower government. And bills that empower trial lawyers. Even bills that empower, of all people, consumers. Perhaps most important are attempts to allow consumers to take a treatment dispute to independent experts who can require a health plan to provide the care



Just What the Doctor Ordered?

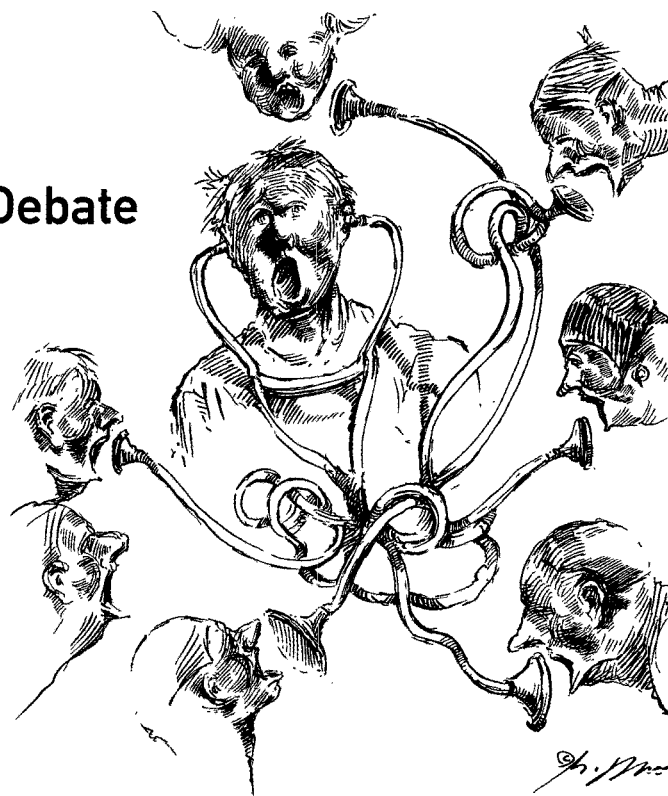
Key Bills in Health-Care Reform Debate

SB 106: Medi-Cal applicants currently must undergo a face-to-face interview with case workers before eligibility is determined. State Senator Richard Polanco's SB 106 would eliminate this interview by allowing people to submit applications by mail, which, according to the Los Angeles Democrat, will boost Medi-Cal enrollment.

SB 18: State Senator Liz Figueroa's solution to what ails the HMO industry is one word: liability. HMOs are protected from lawsuits under current state law but the Fremont Democrat's bill lands squarely in the trial lawyers' court by assigning liability, thereby paving the way for consumer lawsuits. Besides making HMOs liable, SB 18 also would require that HMOs let medical decisions be left in the hands of doctors, not administrators.

AB 1621: Assemblyman Helen Thomson (D-Davis) took the less controversial route regarding liability with AB 1621, which would streamline the patient grievance process but the findings could not be aired in court. HMOs

want the findings permissible in court, but trial lawyers are opposed because it might weaken future lawsuits. Like SB 18, AB 1621 also would make it a crime for non-doctors to make medically necessary decisions on patient health decisions.



if the experts believe it is medically necessary.

A lobbyist who pushes for the passage of many of these bills on behalf of the activist group Health Access, Beth Capell doesn't need to find some disgruntled Californian to come to Sacramento to testify. The Capitol is already filled with them. "The legislators all have had direct experience with these issues," she said. "For improving the insurance for the insured, we have bipartisan support."

The bills can score big political points. Take Assembly Bill 38, for example. Authored in 1996 by then-Assemblywoman Liz Figueroa of Fremont, the bill accelerated the implementation of a federal law banning the so-called "drive-through delivery," giving a mother of newborns at least 48 hours in the hospital if she and her doctor thought it necessary.

Running in the Democratic primary for the state Senate last year against a formidable opponent, fellow Assemblyman Mike Sweeney, Figueroa used her stewardship of the drive-through bill extensively in her campaign, which she won. "It was an extremely helpful issue," said Kaufman, her campaign consultant. "Absolutely. No question."

But do bills like these add up to meaningful reform? The efforts get mixed reviews. "There are many good bills out there," said Capell of Health Access, whose organiza-

tion in recent years has endorsed roughly 10 each session, dubbing them a "Patient Bill of Rights." Dowell, on the other hand, sees the dozens of annual efforts as "kind of ridiculous. Every politician is trying to get into the act. Different provider groups and different consumer groups go to different legislators with ideas. It is just an inevitability of the legislative system."

Raising the profile of health reform in the eyes of voters, however, comes at considerable political risk. Now it is up to Sacramento to demonstrate that it can actually improve the state's health care system rather than simply complain about it every campaign season. "The problem now for legislators is everybody is talking about it," said Kaufman. "If voters next year don't really feel that the situation has been made better, just being able to say you have voted for a lot of things won't mean much."

"Between now and the next election cycle, it's going to be important for voters to believe that some reforms have occurred."

That means some meaningful reforms will have to be drafted by the Legislature, and more importantly, signed and sold to the public by the governor. It is very unclear how interested Davis is in the topic. Early red flags popped up when consumer advocates learned the governor collected \$100,000 in campaign funds from hospital execu-

AB 88/SB 468: Assemblywoman Helen Thomson (D-Davis) has pushed for two years to have insurers cover biologically based mental illness, such as bi-polar disorder and schizophrenia. Her bill, AB 88, isn't as broad in scope as state Senator Richard Polanco's SB 468, which would provide coverage for all forms of mental illness, but it may stand the better chance of being signed by the cautious Davis.

AB 892: In yet another mandated benefit bill, Assemblywoman Elaine Alquist (D-Santa Clara) proposes that hospice care should be included in health plan coverage. Hospice care, traditionally administered by volunteer organizations, never has been included as a benefit in California health plans.

SB 41: Perhaps the most controversial of the mandated benefit bills is state Senator Jackie Speier's (D-Hillsborough) legislation requiring health plans to cover contraceptive devices. Speier wisely included a provision that would exempt religious employers from the bill, thereby assuring a much smoother ride for the bill through the Senate.

AB 12: Assemblywoman Susan Davis (D-Kensington) is fighting for the rights of patients to obtain second opinions on medical diagnoses and decisions. AB 12 would require HMOs to pay for a second medical opinion if the patient requests it. The bill also would require health plans

to follow specific policies and time frames when authorizing treatment.

AB 138: Plenty of legislators have suggested creating new committees, commissions or agencies to regulate the HMO industry, but Assemblyman Martin Gallegos (D-Baldwin Park) seems to have come up with the catchiest idea to date: an independent health-care ombudsman program. To be funded by HMOs through an annual fee, the ombudsman program would provide health consumers with counseling, assistance and advocacy services.

AB 394: California ranks near the bottom when it comes to nurse-to-patient ratios, and Assemblywoman Sheila Kuehl's (D-Santa Monica) bill seeks to remedy that. Strongly backed by the California Nurses Association, AB 394 would prevent hospitals from assigning an unlicensed person instead of a nurse to perform nursing functions and procedures.

AB 698: Preventing HMOs from bankruptcy is behind Assemblywoman Ellen Corbett's (D-San Leandro) bill, which would require the Commissioner of Corporations to establish an Office of Plan-Provider Oversight. The new office would have the power to review industry contracts and ensure the financial soundness of health plans with regulatory action. 🏠

— Farrah McDaid



"One of the most important things a governor can do is to rein in these HMOs, and the first thing to accomplish, that is to let you choose your doctor."

— Governor Gray Davis in a 1998 campaign commercial

tives and then, just days after the fundraiser, turned around to ask legislative leaders to slow the pace of reform bills. In doing so, Davis gave only vague clues as to what sort of fix-its he will find acceptable — something in the areas of external review and liability.

The governor further clouded the outlook for reform in a July meeting with *San Francisco Chronicle* editors when he flatly declared that health insurance was not part of his agenda. "Did you hear me talk about health care? Did you see one commercial on health care reform?" Davis demanded of the editors, according to the *Chronicle's* published account. "That ain't my agenda. My agenda is education." Yet, as the paper noted, Davis did campaign on the issue, promising voters change with a TV commercial aired in September in which he pledged: "One of the most important things a governor can do is to rein in these HMOs, and the first thing to accomplish, that is to let you choose your doctor."

The new governor has opportunities in health care

that eluded his predecessor at the beginning of his term, says Belshe, one of Wilson's top health officials. Davis has the advantages of a healthy economy, political control of both legislative houses and a public appetite for health reform. "This administration, they have got a number of stars that are lining up," she said.

Brown of UCLA is hopeful that the emergence of Latinos into leadership positions in the Legislature will help shift the health reform focus to the uninsured. "I think we have a new crop of leaders who really see this as the No.1 health care issue in California," Brown said. So does Capell of Health Access. "It takes a three- to five-year push to make a big difference. This is what we're gearing up for," she said.

Waiting for Davis

How would a political moderate forward an ambitious health care agenda? One focus would be to simply make the most of the existing programs. Davis, said Belshe, could start by eliminating paperwork that isn't required by the federal government, redirecting hundreds of millions of dollars for administration back into health care. He could also merge the many different government programs, such as Medi-Cal and Healthy Families, into one that offers an array of health plans, mirroring the health benefit strategy of private industry. This would profoundly alter Medi-Cal's image for the uninsured by moving it out of the welfare world. The stigma, paperwork and bureaucratic hassles of the Medi-Cal system, says Brown, are reasons why a million Californians who qualify for Medi-Cal prefer to go without insurance.

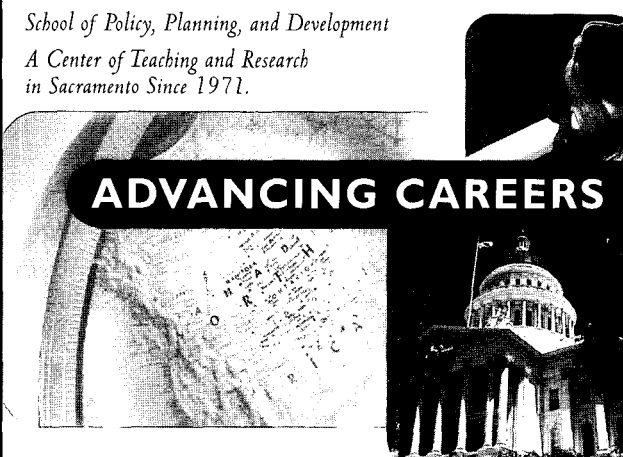
From a distance, reforms like these may seem achievable. Belshe, however, knows firsthand how hard it is to enact change. "They are extremely complicated and controversial politically," she said. Saving money by cutting down on that billion dollars in eligibility reviews, for example, means a possible fight with government employee unions whose workers now do those reviews.

Dramatic improvements in the state's health care programs simply won't happen for Davis with a passive strategy that lets the Legislature draft and pass bills randomly without any guidance. "With appropriate leadership, the next push can really occur," said Belshe. "If he signals some optimism," said Thompson, "I think you'll see new energy."

Meanwhile, 50,000 Californians lose their health insurance every month. When it comes to health care, the status quo is no safe political refuge for either the governor or the Legislature. 

Tom Philp is an editorial page editor for The Sacramento Bee who has covered health care since 1995. Comments on this article may be e-mailed to edit@statenet.com.

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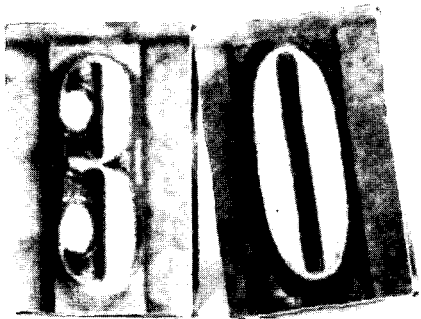
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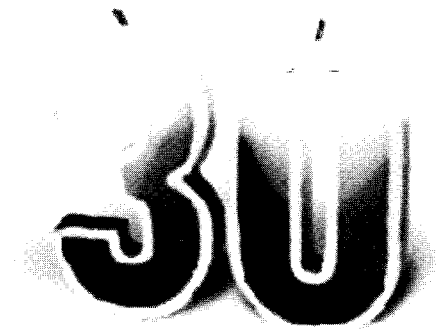
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Making an end run around term limits

See Tom run!
See Dick sue!

Two Southern California lawmakers, state Senators Tom Hayden (D-Los Angeles) and Richard Mountjoy (R-Monrovia), are among a number of legislators angling to circumvent the finality of term limits. Hayden is charting an electoral route. Mountjoy's attempted detour may take him through the courts.

There's a growing incidence of termed-out officials prowling around for a place to land in order to avoid political extinction, so it's not totally unexpected that these two men have joined the hunt. What is interesting about this particular duo is that both men launched their political careers as outsiders, running against government — albeit from opposite ends of the ideological spectrum. And now both are fighting to stay inside it.

Hayden probably is the most famous — some conservatives would argue “infamous” — member of the California Legislature. He emerged from the vortex of Sixties activism. A founder of the radical Students for a Democratic Society, Hayden helped author the New Left manifesto — the Port Huron Statement. Militantly against the Vietnam War, he was a member of the Chicago Seven tried for inciting a riot at the 1968 Democratic National Convention in Chicago.

Hayden's baptism in mainstream electoral politics occurred in 1976 when he unsuccessfully challenged then-incumbent U.S. Senator John Tunney in the Democratic primary.

In 1982 Hayden vested in the system big time. Relying heavily on the resources of his then-spouse, actress Jane Fonda, he waged the first million-dollar Assembly campaign in the state's history, winning election. Redistricted out of his Assembly berth in 1992, Hayden ran for the state Senate, waging another hard-fought, expensive and successful campaign.

Hayden, according to aide Rocky Rushing, has “fundamentally supported term limits,” which kick him out of the Senate in 2000. To avoid them, Hayden — who still is eligible to serve two more Assembly terms — began eyeing one of the two Assembly districts (41 or 42) nested in his 23rd Senate District. As he told the *Los Angeles Daily*

News, Hayden wants back in the Assembly “...to get a lot of work done under a Democratic governor that I had not been able to do.”

Dick Mountjoy also entered the political process as an outsider; he, too, made his political mark railing against the system — but from the right. Mountjoy roared into the Assembly in 1978 on the coattails of the property tax revolt; he was one of the “Proposition 13 babies,” a group of conservative Republicans whose victories were fueled by anti-government fervor. Described as “a strident political warrior,” Mountjoy was a strong proponent of term limits and a co-author of Proposition 187 — the anti-immigration initiative passed in 1994.

That same November, Mountjoy won a special Senate election to replace Republican Frank Hill, who had been convicted on corruption charges. But because Mountjoy was also on the ballot for his Assembly seat, he also got re-elected to the Assembly. He maneuvered to delay his resignation from the lower house until a Republican won the speakership but finally was booted up to the Senate in January 1995. He now claims that, since he did not actually occupy his Senate seat until January — more than halfway through Hill's unexpired term — he is eligible to run for the Senate one more time. California's secretary of state — fellow Republican Bill Jones — disagrees. Jones sees the term-limit clock starting with Mountjoy's election in 1994 — less than halfway through Hill's tenure. That would mean Mountjoy is out in 2000.

Word is Mountjoy will sue rather than heed Jones' ruling. According to one GOP analyst, Mountjoy tells anyone who asks that he's fighting to stay because “his people” want it.

But there is little indication voters are ready to abandon term limits. And the saga of these two southland politicians helps explain why: Two men who made much of their disdain for the system when they entered it now have found themselves seduced by it. 🏛️

Two men who
made much of
their disdain
for the system
have found
themselves
seduced by it.

by Sherry
Bebitch Jeffe



Contributing Editor Sherry Bebitch Jeffe teaches at the Claremont Graduate University. Comments regarding her column may be e-mailed c/o edit@statenet.com.

The Central Valley

Thank you so much for publishing "The Time of the Valley" by Peter King (*June 1999*). It helped me feel that being from the *vaaalleey* isn't such a bad thing after all. There is much sweetness, many secrets, to living here that I hope and pray will survive the growth.

Laura Russell, Sacramento

Atomic politics

Unfortunately in your attempt to find a "political" angle on the Buttonwillow problem (*D.C. Perspective, July 1999*) you once again missed the real story on Ward Valley.

The most critical omission is what exactly was planned for Ward Valley. Yes, it would receive low-level medical waste. But, in addition, the site was licensed for 32 pounds of highly radioactive plutonium—which would also go into the unlined trenches.

Second, the Ward Valley dump licensee has an abysmal safety record. Review the records in Kentucky as I have and then opine as to how comfortable you would be with this fox guarding the nuclear hen house.

Finally, since the amount of waste generated since the signing of the interstate compact has dropped precipitously there is a serious question as to the viability of both Ward Valley and the existing

facility in Utah. A recent report indicates that bringing Ward Valley on line would doom both facilities.

Alan Gordon, Sacramento

Migrant Mother

I just read Claudia Buck's wonderful story about Florence Thompson (*June 1999*).

I wish I had written that.

Carl Nolte, San Francisco Chronicle

Role of unions

What a disappointment to see the article by Lance T. Izumi in the August 1999 issue of *California Journal*! I cannot recall the Journal printing such a piece in the many years I have been a subscriber.

Mr. Izumi is entitled to his opinion, but I have never thought of the *Journal* as a vehicle for what is essentially a diatribe. To raise the bugaboo of "Big Labor" in an era when union membership is but a fraction of past strength is, if not plain ignorance, misleading. To ignore the role of unions in fighting against employer exploitation of workers is woefully unfair. Mr. Izumi should take a look at how the "competitive labor market" he promotes is affecting the growing number of people trying to live on minimum-wage, part-time (no benefits) jobs. It is not a pretty picture.

Richard B. Rice, Davis

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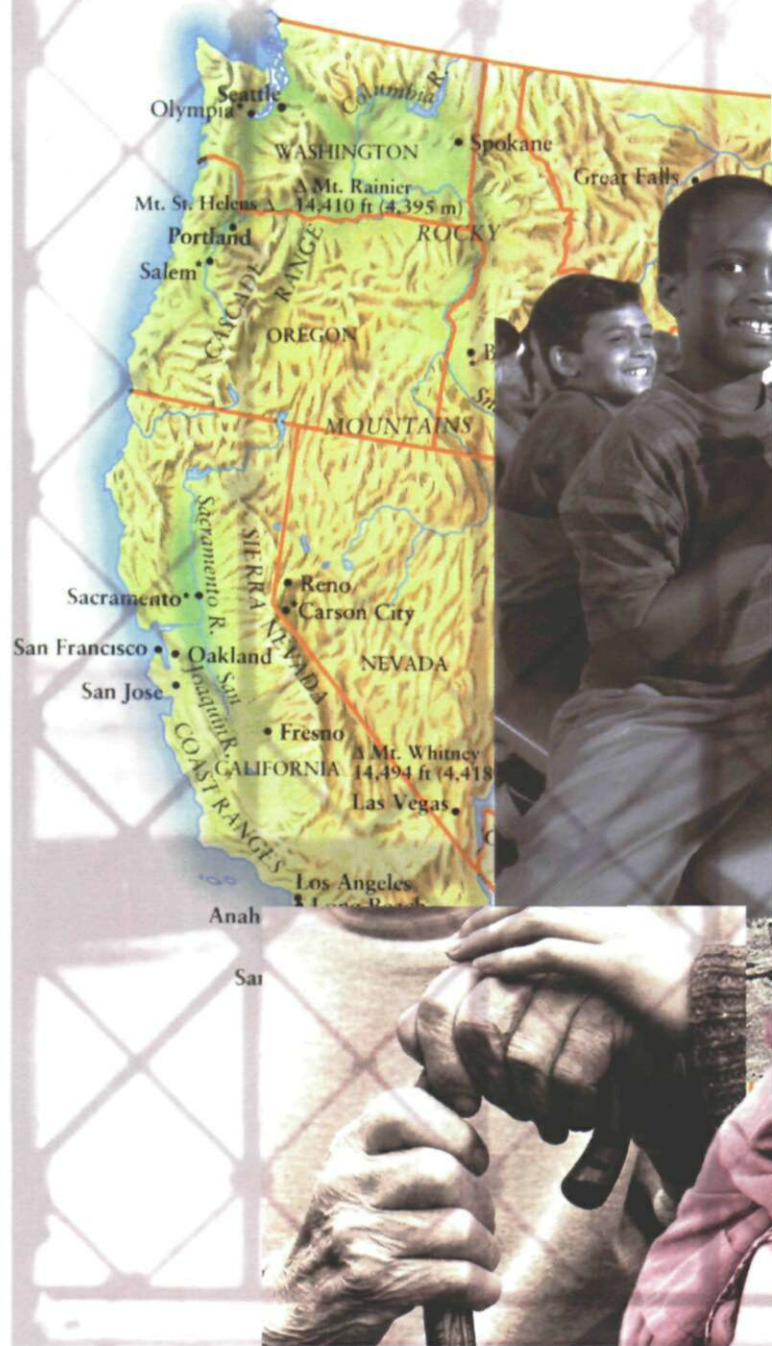
Welfare decision has impact beyond Califo

... and beyond welfare reform. Observer's say it reaffirms individuals' rights.

By Lou Cannon

If news coverage is any guide, the 7-2 ruling by which the United States Supreme Court found California's two-tier welfare system unconstitutional was what journalists call "a one-day story." Reacting to the decision under deadline pressures, television networks hastily concluded that it would limit the ability of states to control welfare costs. National newspapers such as *The New York Times* and *The Washington Post* delved deeper, noting that the court had revived (in the words of *The Post's* Joan Biskupic) "a constitutional doctrine making citizens of all states equal." But even in these newspapers, the story quickly vanished from sight, overshadowed by the war in Kosovo and the high-school shooting in Littleton, Colorado.

Nonetheless, in expanding the reach and power of the Constitution, the decision in the California welfare case known as *Saenz v. Roe* may rank in historical significance with *Brown v. Board of Education* and *Baker v. Carr*, the two high-court decisions of the 20th century with the greatest impact on our federal system. *Brown* is the famous unanimous 1954 decision of the Earl Warren court that prohibited racial segregation in schools and paved the way for other legal challenges to state-sanctioned white supremacy.



Baker was the 5-4 decision of the Warren court that in 1962 made "one person, one vote" the standard for reapportioning the House of Representatives and, soon afterward, state legislatures.

The timing of *Saenz v. Roe* has special significance.

nia . . .



Under the banner of the New Federalism, the Nixon administration began relinquishing power and programs to the states that had been accumulating in Washington D.C. for a half century since the New Deal. The process of devolution has rapidly accelerated during the Clinton

years, capped by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 — the so-called welfare reform bill — which dismantled a system of federal aid to the poor begun by President Franklin D. Roosevelt and made welfare the responsibility of the states.

But the high court said in *Saenz* that this responsibility has constitutional limits. Specifically, it held that any citizen can travel anywhere within our country and live in the state of his or her choice and that these rights prevent a state from treating newcomers differently than long-term residents. The case invalidated a 1992 California law, signed by former Republican Governor Pete Wilson, that would have denied equal benefits to welfare recipients from other states until they had lived a year in California. The plaintiff had moved to California from Oklahoma, where she and her family of three received a monthly allowance of \$307. Her monthly benefit in California was \$565, which she received while the case was under appeal.

The California law had impact beyond state boundaries, and the *Saenz* ruling has implications beyond welfare law. California is a notable trend-setter, and the 1996 federal welfare measure encouraged states to cut costs. Fourteen states passed bills that largely copied California's residency requirements. All of these laws were invalidated by *Saenz v. Roe*.

What extends the decision beyond welfare law is the sweeping rationale used by the court to guarantee a "right to travel," words that do not appear in the Constitution. Justice John Paul Stevens based his opinion on the 14th Amendment, passed during Reconstruction after the Civil War when freed slaves were struggling to obtain full citizenship. The amendment said, "No state shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States." This sentence, known as the privileges and immunities clause, was supposed to assure equality for blacks but was interpreted narrowly by the Supreme Court in 1873 so it did not apply to state actions. This happened, not coincidentally, at a time when northerners had wearied of Reconstruction and Southern states were busy attempting to re-establish white supremacy. But Stevens pointedly quoted from a dissent in the 1873 case which said, "A citizen of the United States has a perfect constitutional right to go to and reside in any state he chooses and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right."

Stevens, the most liberal of the nine justices, was joined in his opinion by Justice Antonin Scalia, the court's leading intellect and most formidable conservative. Indeed, *Saenz* may become an especially powerful precedent because it is one of those rare decisions that resonates across the ideological spectrum to those concerned with individual rights.

Assessing the impact of *Saenz*, Linda Greenhouse of *The New York Times* quoted William Mellor of the conservative Institute for Justice, which represents entrepreneurs who seek to conduct business free of state regulation. Mellor, a lawyer, called resurrection of the privileges and immunities clause "very exciting" and said it could protect "many attributes of citizenship that people think of as part of the American dream." The decision was equally popular with liberals. Mark Rosenbaum, who argued the case for

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"California is not only one of the largest, most populated and most beautiful states in the union, it is also one of the most generous."

— Justice John Paul Stevens

the American Civil Liberties Union of Southern California, said the court

had reaffirmed the principle "that states may not fence out poor migrants."

Such fencing out was what Governor Wilson (R) intended when he proposed the two-tier welfare system — and it remains a principle objective of politicians in both parties. Governor Gray Davis (D), who issued a statement after the *Saenz* decision expressing disappointment, shares Wilson's concern that California is a "welfare magnet," a contention cheerfully embraced by Justice Stevens in an opinion as notable for its good humor as its constitutional force.

"California is not only one of the largest, most populated and most beautiful states in the union," wrote Stevens, in words that might be appropriated by the California Chamber of Commerce, "it is also one of the most generous." But that this generosity might attract new residents is no basis for abridging the right to travel. If California needed to reduce welfare costs, wrote Stevens, "an even-handed, across-the-board reduction of about 72 cents for every beneficiary would produce the same result."

Explaining the New Federalism in 1970, then-Secretary of Labor George Shultz said, "We must act as one nation in determining national goals. We must act as a federation of states and localities in meeting those goals, providing leeway for local option and individual diversity." Although the *Saenz* decision would seem to diminish those options, history suggests that people lose faith in state governments when they are unrepresentative, defy the Constitution or ignore national purpose. Political historian Michael Barone observed that liberals gradually abandoned the notion that states could serve as laboratories of democracy and reform because legislatures were controlled by powerful minorities "which had managed public affairs more or less uninterrupted since the Civil War." By the time *Carr* came along, liberals had long been convinced that the cure for most social ills was to be found in Washington, D.C. Meanwhile, the South lost ground and respect as a region because of state laws that enshrined racial discrimination and thwarted the national goal of equality. *Brown* and its successors were essential to a functional federalism. Instead of harming Southern states, the high court freed them from carrying the unsustainable burden of white supremacy.

Saenz will spare states the emotional pangs of two-tier citizenship without impeding welfare reform. Most states have massively reduced caseloads and welfare costs since

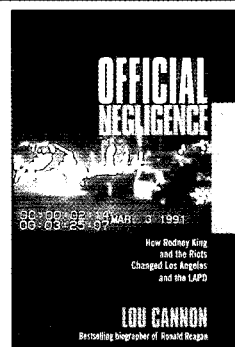
passage of the federal bill, although it remains to be seen if they can sustain this during the next recession. In any case, residency requirements account for little of the savings. Even Eloise Anderson, social services director under Gov. Wilson and an architect of the two-tier system, acknowledged to the *Los Angeles Times* that residency requirements have become less important to conservatives now that work is usually a requirement for welfare.

But the right to travel remains important to Americans of all persuasions. As Justice Stevens put it, "Citizens of the United States, whether rich or poor, have the right to be citizens of the state wherein they reside. The states, however, do not have the right to select their citizens." 

Lou Cannon is a contributing editor to California Journal. For 26 years, he was a political reporter and columnist for The Washington Post, for which he still writes. He also is the author of six books, including "Official Negligence: How Rodney King and the Riots Changed Los Angeles and the LAPD."

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Teaching character through religion

Although years of poor test scores in California have naturally focused law makers and educators on ways to improve student academic performance, the recent outburst of deadly school violence has renewed interest in the long neglected subject of character education.

Scholars through the ages have warned about the effects of such neglect. Aristotle noted that the worst kind of person was not the evil person who lacked knowledge, but the intelligent person who lacked goodness. In more modern times, the late Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching, said, "To have people who are well informed but not constrained by conscience is, conceivably, the most dangerous outcome of education possible." The Lenins, Maos, as well as the Littleton killers are evidence of the truth of these observations.

Recently, a group of top character education experts gathered to share their views at a conference co-sponsored by the California-based Link Institute and the Washington, DC-based Center for Education Reform (CER). One participant, Professor Kevin Ryan, founder of Boston University's Center for Advancement of Ethics and Character, criticized the dominant trend in schools today where teachers merely act as facilitators so that children can create their own moral structures and hierarchies. Ryan, in his book "Building Character in Schools," says that good character "is about knowing the good, loving the good, and doing the good."

The key, of course, is determining what is the "good." Moral relativists in the teaching profession and in our schools of education claim that determining an absolute "good" is impossible because what may be good for one person may be bad for another.

Bunk, says Gary Beckner, head of the California-headquartered Association of American Educators (AAE), a growing national teachers organization. At the conference, Beckner pointed out that, "In willingly, or unwittingly, accepting the 'don't impose your morality' philosophy, most teachers today apparently do not realize there is no such thing as 'value-free' education."

Beckner criticized attempts to confuse tolerance with character: "Yes, our children should be

taught to respect every person's right to make their own choices, but they should not be forced to respect the choices every person makes."

Beckner observed that: "We can all agree that we must raise our academic standards. However, for our children's sake, indeed, for America's sake, we must at the same time raise our moral standards." And what should be the basis for that moral standard? Although modernists and liberals will scorn the suggestion, Beckner fearlessly says that our moral standard must be based on religious principles such as the Ten Commandments.

Religious principles are key because they transcend time, fashion, and individual opinion. Since they are based on the premise of a "supreme being" as the final authority, Beckner argues that religious principles answer the question of "who says" I should or shouldn't do something, or what is right or wrong. Without a final moral authority," says Becker, "it is very difficult, if not impossible, to teach morality."

But can morality/character based on religious principles be taught in today's public schools? In view of the anti-religion-in-the-public-schools litigation over the past decades, a religion-based character education program would seem a likely target of a lawsuit.

Given this reality, some argue that school-choice vouchers are the ultimate answer. Earlier this year, the U.S. Supreme Court let stand a decision by the Wisconsin Supreme Court allowing parents to use government-funded vouchers to send children to private religious schools. Vouchers may therefore allow children to get the explicit religious morality/character training that they can't get at public schools.

The bottom line is that we ignore the moral development of our young people at our peril. As Horace Mann warned: "For one man who has been ruined for want of intellect, hundreds have perished for want of morals. And yet, we go on bestowing at least a hundred times more care and cost in education of the intellect than in the cultivation of moral principles." 🏛️

Contributing Editor Lance T. Izumi is a senior fellow at the Pacific Research Institute in San Francisco. Comments may be e-mailed to edit@statenet.com.

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by Lance
T. Izumi



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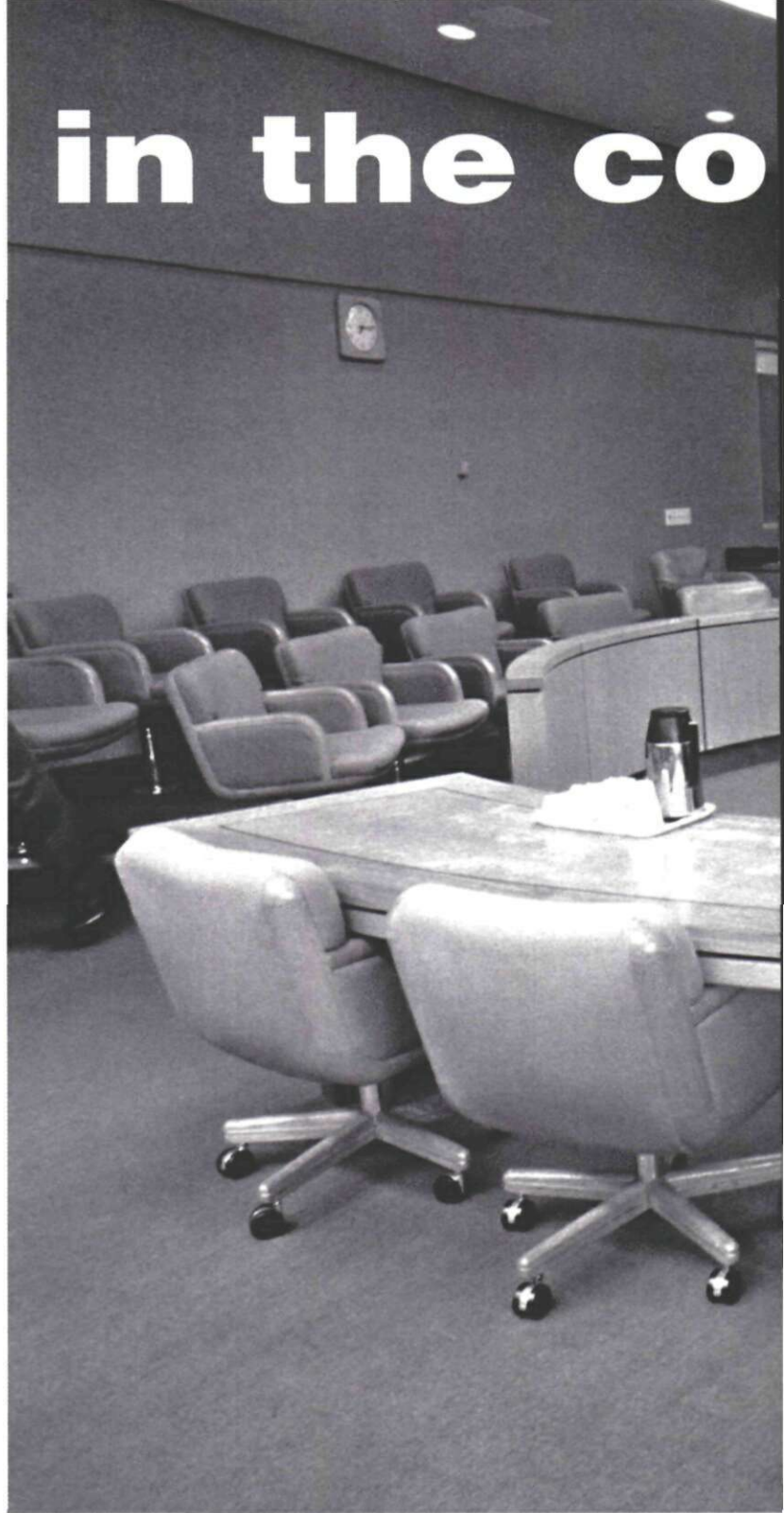
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Silence in the cò

Juvenile and dependency courts have, for the last 100 years, done business under a cloak of secrecy. And while that anonymity is meant to protect the identity of children in the courtroom, a new push in the California Legislature is re-examining the wisdom of keeping these court cases under wraps.

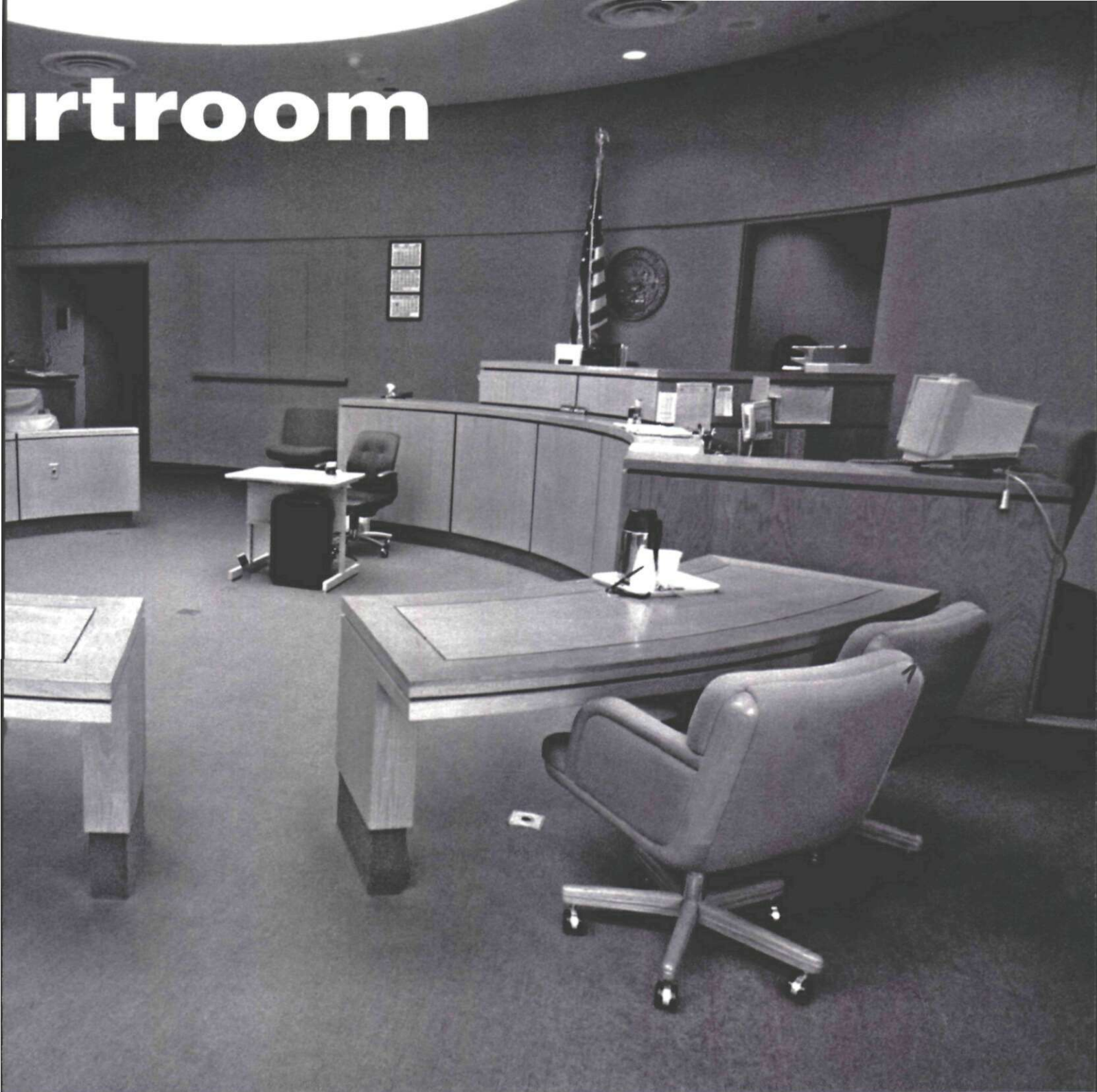
By Max Vanzi



You know at once you are not in a public place. From the court clerk: "Who are you? What are you doing here?" And later, same place, from a lawyer, one of the regulars around here: "Your honor, my client objects to [an outsider] being in the courtroom."

Where is this court, somewhere in rural China? No, it's in a suburb of Sacramento, but you would get much the same reaction in most American courtrooms that hear crimes and cases of mistreatment by and against children. Such cases are generally handled in private, in rooms cordoned off from adult court proceedings, no public

courtroom



allowed in, no juries, no TV cameras—an exception within the nation's system of open courts.

And certainly no reporters, unless the judge says otherwise, as a couple of judges did for this writer. But the one-day visits had to be arranged in advance with conditions, and in Stockton, Judge Lesley Holland checked references. In Sacramento, the judge, or in this case the presiding referee, Dean Petersen, had no problem admitting a visitor as long as — and he explained this to the objecting lawyer

—it was agreed that no names of parents or children would be divulged.

In only 16 states are juvenile courts, with limitations, open to the public, and California is not one of them. Here the doors stay closed and court records remain confidential, in both juvenile delinquency courts where youth crimes are adjudicated and in the dependency courts where suspected cases of child abuse, neglect and abandonment wind up.

It is the role of the dependency courts, where judges deem it appropriate, to separate infants, children and adolescents from their parents after social workers have found cause to remove kids, forcibly if necessary, from their family homes.

Yet this awesome responsibility to effectively orphan a child, or, equally critical, make a decision not to separate

fact-finding hearing in Burbank, taking testimony for and against privacy in dependency proceedings. Schiff, a former federal prosecutor preparing to run for Congress next year after serving one term in the state Senate, said after the hearing that he was withholding judgment. But he added he would consider offering legislation to loosen up dependency court confidentiality if he becomes con-

Are confidentiality statutes being observed in the best interests of children, or are they used to “shield from disclosure potential malfeasance within the

— state Senator Adam Schiff

an offspring from a troubled home, takes place without public oversight. Not only is the court session held in private, so is the initial and often explosive confrontation that erupts when the social worker comes knocking on the door.

Deep scars in young lives

Advocates for the status quo proclaim that privacy is essential for the sake of children involved. In the dependency system, they argue, children enter the court's jurisdiction blameless of wrongdoing, pure victims of the horrors at home that brought them there.

Society at large, the argument goes, has no rightful claim on learning their circumstances and spreading the word, thus piling ridicule and embarrassment on top of deep scars already embedded in young lives. “They’re kicked around enough as it is,” said Doris Brooks, a Sacramento County social worker.

Still, not everyone believes strict confidentiality is a good idea, including some prominent juvenile court judges. Critics charge that a culture of silence envelops the system, allowing bad decisions to go unchallenged, bureaucracies dealing with children to cover up their mistakes and confidentiality to be taken to ridiculous extremes having nothing to do with protecting the child.

News media lawyers have waged titanic legal battles arguing for more access. Lawyers representing families in dependency court complain that even they are blocked from access to important records. Higher courts have grappled with the issue, but never has an order come down to undo the tradition of privacy in California's juvenile courts.

This year, however, for the first time, the Legislature is considering opening the door on this closed-off world. In May, state Senator Adam Schiff (D-Burbank) held a daylong

vinced it is the right thing to do.

At issue, he said, was whether confidentiality statutes are being observed in the best interests of children or whether they are used to “shield from disclosure potential malfeasance within the system.”

The senator left for another day an inquiry into the other arm of the juvenile justice system, the delinquency courts, which also operate in closed sessions. His hearing concentrated instead on the system that reviews cases of children removed from ostensibly dangerous homes.

California has a large share

Dependency courts hear thousands of such cases every working day, creating with their decisions a population of farmed-out children estimated by the Child Welfare League of America last year at more than 500,000 nationwide. Actual reports of child abuse and neglect, the league said, run to more than 3 million a year and the volume is rising.

California accrues a disproportionate share — more than 100,000 children living in foster homes last year, according to the state Department of Social Services, but the numbers are shaky and could be understated in this privacy-enclosed universe. Los Angeles County alone accounts for 50,000 children who are wards of 27 dependency courts.

The supervising judge of those courts, former Democratic Assemblyman Terry Friedman, is among those favoring a more open system. As he puts it, the dependency courts should be open, with exceptions, instead of being closed, with exceptions.

Among other reasons, Friedman told the Burbank hearing, the public should have access to the juvenile court process because “they’re paying for it.” It’s asking a lot, he said, to request more and more taxpayer funds, sorely needed to run a constantly overburdened system, but declare to the public, “You can’t know what goes on in that system.”

Closing courts where children's cases are heard “protects important interests,” Friedman said. But on balance, even at the risk of making it harder to rehabilitate and



State Senator
Adam Schiff

reunite some families, "open proceedings will for the most part move us in the right direction." Some sensitive data, such as psychological evaluations of family members, should, however, remain out of public view, Friedman said, and judges should be able to close court proceedings in particular cases if that's in the best interest of the child.

Illustrating that this is an issue far from being settled, two other juvenile court judges who spoke at the hearing defended closed courts. Orange County Judge Kim Dunning said it was the public, more than the press, that concerned her should the dependency courts become open to one and all.

Dunning said she did not want "nosy neighbors" attending hearings, nor does she want "an INS agent sitting in my courtroom" when undocumented parents are before her. The U.S.-born children of those parents, she said, "are American citizens."

Protected by privacy

Riverside County Judge James Warren said that only in a confidential setting can essential facts emerge in child abuse cases. Kids need to feel the protection of privacy, as do parents who are required to admit to "horrible behavior." He told of a 15-year-old who got pregnant, bore the child in a bathroom, razored away the umbilical cord and left the baby on a neighbor's doorstep. "The press loved it,"

and wanted access to the whole record, "but [reporters] should not have been writing about it, in my opinion," Warren said.

But the most gruesome horror stories tend to circulate on the other side of the argument. One parent stepped forth at the Burbank hearing and accused a dependency court referee of sending her son home to the father that beat him to death. Another spoke of his child "taken from me, ground up in the system, then given back to me with the remark, 'Gee, we shouldn't have picked her up in the first place.'"

In each case, persistent parents had to resist the laws of confidentiality to bring their woes to light, leaving one to wonder how many times, when the parents are not so persistent, a child's case is mishandled but remains under wraps.

The most horrific LA case on record, in fact, burst into the open thanks to one of the most persistent parents of all.

In 1997, county authorities took away from Debra Reid of Glendale her youngest son, Debin, 4, apparently judging her unfit after a shouting scene during a court hearing that was convened after Reid complained that Debin had been abused by his father.

Some weeks later, the county also seized Reid's oldest child, Jonathan, 9, accusing her of neglecting the boy's asthma and diabetes conditions. Both children were placed in county foster care.

Six weeks later, while in county custody, Jonathan

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died from a massive overdose of asthma medication.

Reid became infuriated, and began a marathon effort to retrieve her other son, amid charges that she was unbalanced as evidenced by her frequent flare-ups against the system that killed one of her children.

Through the efforts of Judge Friedman and later another judge, Reid was finally reunited at home with her surviving son.

"When a child dies"

The blow-by-blow details, including the use of names, were extensively covered by the Los Angeles media, partly because Reid blew the whistle on her own case, and partly because of constant pressure brought by media lawyers and Reid's lawyers to gain access to records.

Karlene Goller, a lawyer for the *Los Angeles Times*, said the *Times* continually "went back and forth between the judge and the [dependency court] commissioner," pressing for records, which were eventually obtained.

The county tried to "seal those records showing my son had been drugged to death," Reid said at the Schiff hearing. "There should be no confidentiality when a child dies."

Away from the formalities of a legislative hearing, in the dependency courtrooms and the adjoining hallways crowded with those awaiting the outcome of a hearing that

could end in, as the phrase has it, "termination of parental rights," another perspective takes shape.

Some lawyers, while handling cases, don't want to talk about lifting confidentiality. "I'm too busy to talk to you," said one. "I think we're done," snapped another at the Sacramento courtroom of Referee Petersen.

Lawyer Miles Stern, previously a news reporter, said maybe an argument can be made for less confidentiality, but when a "6-year-old kid is molested by his dad, I don't think the world needs to know about it."

Petersen, who has cooperated with *Sacramento Bee* reporters in efforts to tell stories of abused children as long as names are not published, told this writer one day, "We're a little closed society here. We need to explain [to the media] what we do, but we must protect those identities."

A tricky part of that arrangement is telling a reporter what can and cannot be published. Can a judge, for example, tell a reporter he can't interview families, can't obtain identities outside the courtroom, and publish them? The California Court of Appeal has said no.

The issue is circumvented in most cases because reporters themselves agree to the judge's ground rules in advance.

But what if, asked state Senator Schiff at the Burbank hearing, the courts were subjected to TV interviewers stick-

Marking a centennial

At one time, juvenile courts heard the cases of troubled youths in open courtrooms in plain view of the public.

By Max Vanzi

This year marks the 100th anniversary of the nation's juvenile courts, an event being celebrated with some fanfare in Chicago, the city where this variation on American courtroom traditions began.

The idea that gave rise to special courts for youths in

trouble sprang from the notion that kids are different and should be treated as such by the laws of the land. Given the resilience of youth, the early reformers argued, a



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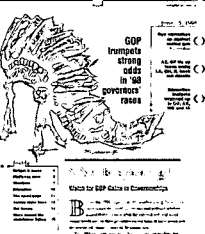
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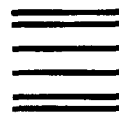
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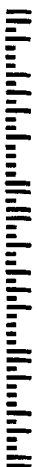
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ing mikes in kids' faces, asking, for example, how they feel about losing their mother — which Schiff said actually happened once outside a burning home while the mother was dying inside.

That kind of conduct going on in a “completely unregulated environment” in or around a dependency courtroom is cause for “obvious concern,” Schiff said.

Juvenile Court Judge Len Edwards in San Jose, with what he called an “elaborate court order to protect identities up to a point,” for a time opened proceedings to reporters from the *San Jose Mercury News*, out of which a book was written. Edwards still allows openness but only up to a point

“I have people in my court every day,” he said in a telephone interview. But they are invited guests. “I know who’s there.”

A gut-wrenching turning point

But even this judge, forthright in his beliefs on behalf of opening up dependency courts, cannot draw a line covering all situations. “In terms of photographing, bringing in live camera crews, those are tough questions,” he said.

Meanwhile, in Judge Holland’s Stockton courtroom, it becomes clear that each case represents a gut-wrenching

turning point in someone’s life. There is the man in jail duds who lost his freedom, and is now losing his son, because of his drug habit. Now comes the man in a pony-tail with religious literature showing in his back pocket, complaining, after his case has been put over for the umpteenth time, “This is a little baby we’re talking about here.” A woman awaiting her hearing outside the courtroom is sure that, this time, drug rehab is working. But inside she would plead no contest to charges that her methamphetamine habit had been passed on to her child before the baby was born. She is told that the infant, for now anyway, is better off without her.

But is any of this news, serving a public interest if reported case by case?

One of the state officials testifying at the Schiff hearing, attorney Peter Castillo, said he checked the reaction with states that had recently opened their juvenile courts. In each of three states he contacted, Castillo said, the public and the media at first rushed to get seats inside the previously closed courtrooms.

But the novelty soon wore off, and since then, he was told, “hardly anyone bothers to attend.” 🏛️

Max Vanzi is a freelance writer in Sacramento. Comments on this story may be sent to editor@statenet.com.

youngster could be redirected from the urges and circumstances that landed him or her before a court of law.

The early juvenile courts were thus configured to dispense a less formal, less cut-and-dried brand of justice than that meted out in the adult courts. A range of options, jail being but one of them, were configured for young perpetrators of crime. For the abused and neglected, various forms of separation from a troubled home evolved over the years, some temporary, some permanent, involving placement in foster homes, with other relatives or with adoptive parents.

But the first juvenile courts did resemble the adult courts in one important respect, notes David Tanenhaus, a professor of constitutional history at the University of Nevada, Las Vegas. Contrary to widespread belief, he said, the first juvenile courts were open to the public. “It’s a myth that juvenile courts have always been closed” as most are now, he said.

Officers of the new courts soon concluded, however, it was a mistake to offer seats in the new courtrooms to a curious public and a robust press, Tanenhaus said. Poignantly, he noted, county probation officers would make the rounds of newspaper offices in Chicago and later in other cities, pleading with editors not to publish the names of children whose cases were before the juvenile

courts.

Public disclosure, the court officers argued, would stigmatize the children in their neighborhoods.

Among those who sought to dissuade the press from reporting children’s identities in those early years was the chief probation officer in St. Louis, Missouri, Roger Baldwin. Baldwin went on to become one of the founders of the American Civil Liberties Union and is honored today as “one of our icons,” said a current ACLU member.

Another key figure in those early debates was a Boston judge, Harvey Humphrey Baker, who greatly influenced the eventual closing of the juvenile courts to the public, Tanenhaus said. Baker “made the analogy that the juvenile court is sort of like a doctor’s office,” Tanenhaus said. The judge argued that proceedings in court should enjoy the same confidentiality as a doctor conferring with a patient.

Baker laid out the case for closed courts in a 1909 treatise commemorating the 10th anniversary of the juvenile courts, and changes in state laws soon followed, Tanenhaus noted.

California juvenile courts, established in 1903, today observe fairly strict confidentiality, with exceptions at the discretion of individual judges. But the exceptions almost always reflect the same concerns that were on the minds of those early court officers who came calling at newspapers in the Midwest.

The names of children, most judges admonish today, should never leave the courtroom. 🏛️



Judicial Review

Voter confirmation margins for state Supreme and Appellate Court justices had slumped for 15 years before they spiked back up in 1998. Are voters happier with the judiciary these days, or is the upturn merely another reflection of a complacent electorate?

By Charles M. Price



Any good student of jurisprudence is almost by definition also a good student of history, and as 1998 dawned it was clear Ronald George, the chief justice of the California Supreme Court, was both. George and three of his colleagues had voted to take another look at a previously upheld law requiring parental consent for abortions. Abortion rights opponents had sworn revenge and were busy trying to cobble together a coalition to contest his reconfirmation.

Operating on the theory that the best defense is a good offense, George, appointed to the court by Republican Governor Pete Wilson, did something that might be



considered almost sacrilegious for a member of the robe-wearing branch of government — he hired a political consultant. He also set about collecting an imposing list of endorsements from political celebrities and his campaign successfully raised close to \$600,000 to be used in defense of his confirmation to another 12-year term.

When the campaign was finally joined, it turned out not to be much of a campaign at all. The abortion-rights

foes collected barely a tenth of what George raised and failed to muster any kind of broad grass roots campaign outside the religious conservative community. Republicans and Democrats alike rallied around the chief justice, including many conservatives who oppose abortion. In the end, nearly three out of four voters opted to retain George, and the three other justices on the ballot last year received similarly lopsided victories.

In hindsight, George's advance work seems an exercise in overkill. But neither George nor anyone else could have foreseen the sudden sea change in voting patterns in judicial elections that came last year.

Over nearly two decades prior to the 1998 election, the margins of support for appointees to the state's highest judicial offices had been in something of a funk. Throughout most of the century, justices at the state supreme and appellate levels cruised through reconfirmation elections with support running in the 90 percent range. Even as recently as 1974, justices were winning reconfirmation by a three-to-one margin. From 1978 onward, however, the victory margins dipped precipitously (see "Robe Rage," page 37). By 1994, conventional political wisdom held that there was a built-in "no" vote in Supreme Court confirmation votes of anywhere from 30 to 35 percent. Even the lower-profile appeals court judges found their support dwindling. Perhaps most tellingly, 1986 marked the year where the previously unthinkable happened — three state Supreme Court justices were turned out of office.

When searching out the catalyst for this sudden skepticism toward judicial appointees, most point to one person: Rose Elizabeth Bird.

Bird is lightning rod

Nominated by Democratic Governor Jerry Brown in 1977, Bird was the first woman ever to serve on the California Supreme Court. Her appointment to the court

was controversial from the get-go, as she was plucked from out of Brown's cabinet to serve on the court without any prior judicial experience. Her decisions and style angered some in the legal community, who argued that her nomination as chief justice was affirmative action tokenism. Republican conservatives just didn't like her decisions or her world view, which they viewed as "extremist liberal." In Bird's first confirmation election in 1978, conservatives mounted an unprecedented effort urging "No on Bird" votes.

"When I first brought the subject [of an opposition campaign] up, everybody thought I was nuts," recalled former state Senator H.L. Richardson (R), who organized the effort against Bird. "But Rose Bird got out in front farther than any other of the judges. She was a lightning rod."

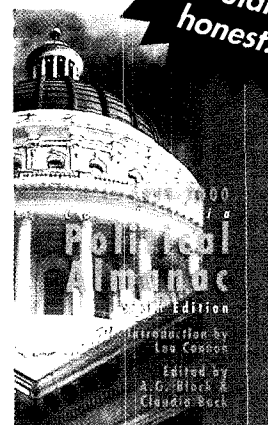
The anti-Bird campaign nearly succeeded; she was narrowly confirmed with a vote of 52 percent "yes," 48 percent "no." Richardson says that election "set the stage" for a more comprehensive effort against the chief justice in her scheduled 1986 confirmation vote (Supreme Court justices face confirmation in the election following their appointment as well as at the end of each twelve-year term to which they were appointed). With public frustration about the lack of enforcement of the death penalty at its zenith, Chief Justice Bird and two other Jerry Brown-appointed liberals on the bench, Associate Justices Cruz Reynoso and Charles Grodin, faced confirmation elections

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in 1986. The three were targeted by a well-financed, well-coordinated, conservative coalition attacking them for their refusal to impose the death penalty on violent felons. In the 1986 election, voters overwhelmingly rejected the three liberal judges' confirmations. In fact, the three averaged only 39 percent "yes" votes. The justices not targeted, including liberal Pat Brown-appointed Stanley Mosk, won overwhelming confirmation, averaging 78 percent "yes" votes.

Having taken out Bird and two of her court allies, conservative activists turned their focus more to gubernatorial and legislative politics, confident that GOP Governors George Deukmejian and Pete Wilson would keep the court leaning right. Yet, judicial victory margins kept going down even though the judicial elections returned to the anonymity in which they'd been stuck in the pre-Bird era. Since the ouster of Judges Bird, Reynoso, and Grodin in 1986, anywhere from a quarter to a third to, in a few instances, nearly half of California voters have voted "no" on confirmations of some judges. As recently as 1994, the average approval rate for appellate court justices dipped below 60 percent.

A tiny portion decides

A number of factors probably account for the public's willingness in contemporary California to vote down judges. For one thing, the pool of individuals making the judicial decision has continued to shrink. Over the last four state elections only about 43 percent of voting age Californians (about 59 percent of those who are registered, voted). Second, of those voting, approximately 30 percent pass on the Supreme Court races and close to 40 percent skip voting on the court of appeals contests (in contrast, only about 3 percent of those who vote don't vote in the governor's contest). In short, deciding whether a judge is confirmed or not is determined by a relatively small segment — one-fourth — of the California adult population.

Those who do cast ballots in judicial races are often relatively uninformed about the votes they are casting. Some observers theorize that certain votes are cast on something as superficial as the judicial candidate's name. In 1990 with no controversy surrounding members of the Supreme Court, Justice Armand Arabian was confirmed by a relatively slim margin, 56 percent "yes" votes, while his

four other fellow Supreme Court justices received an average of 67 percent "yes votes." It was hypothesized by some court observers at the time that many of the "no" votes Arabian received were likely anti-Arab votes (the election was conducted just after the Desert Storm operation where a U.S.-led coalition successfully forced Iraq out of Kuwait), although former Justice Arabian, in fact, is an Armenian-American, not an Arab-American. In 1994 Court of Appeals Judge Coleman Blease received a bare 51.95 percent "yes" votes in his 3rd District race for confirmation. Some experts thought that Judge Blease's narrow victory was triggered by conservative voters voting against a liberal judge with an ACLU background, but one court watcher believes it may have been, in part, a function of Blease's first name.

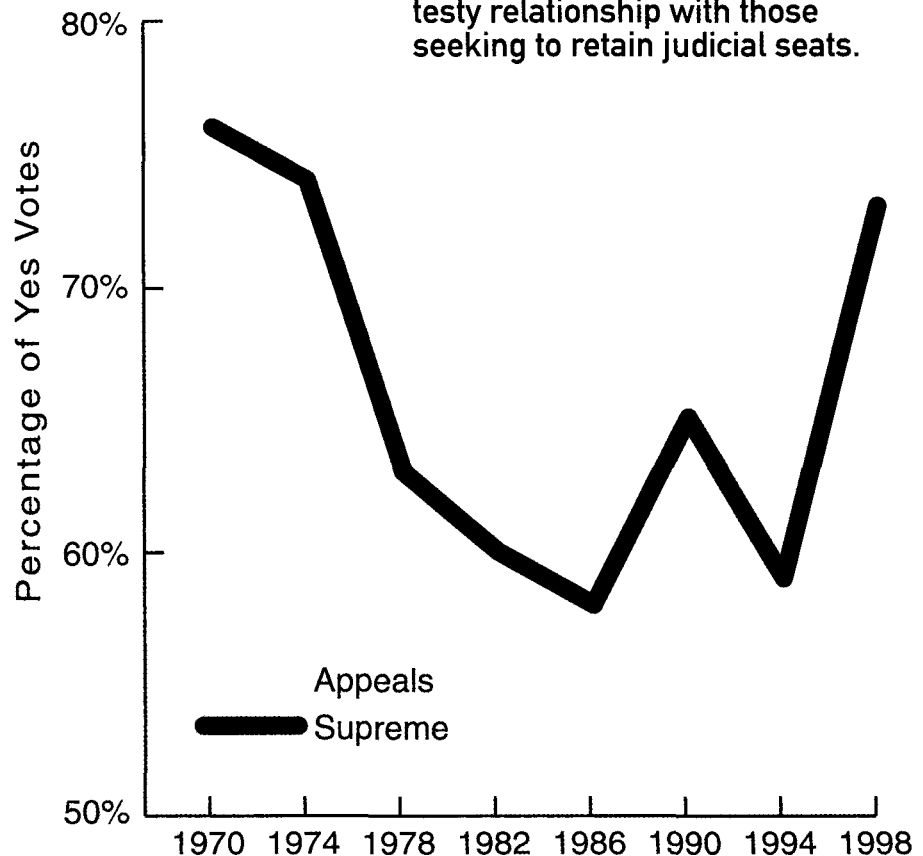
"It sounds to some voters as if he might be an African American," said Bob Egelko, who writes about the state courts for Associated Press. "I'd like to see his 'yes' vote percentage if his first name were Bill or Tom. I'm sure it would be much higher."

Public tough on crime

Most observers, however, link the wariness of voters

Robe Rage

Until last year, voters have had a testy relationship with those seeking to retain judicial seats.



Sources: Statements of Vote, 1970-98, California Secretary of State.

toward judicial nominees to lingering suspicions that the courts weren't doing enough to combat crime. Anti-crime initiatives, such as Three Strikes You're Out and the Crime Victim's Bill of Rights, remained staples in gubernatorial election years, and justices, no matter how golden their "tough on crime" credentials, seemed easy targets. "I think it was primarily directed at the judiciary," said Richardson. "They didn't feel there was sufficient punishment out there." Others saw the judicial votes as a reflection of the general frustration in the electorate. After Bird was gone, other judicial lightning rods emerged, such as Superior Court Judge Lance Ito, the man who presided over the O.J. Simpson criminal trial. Tough economic conditions in the 1990s added to the frustration, tarring judges with the same burgeoning anti-government sentiments that produced the term-limits movement.

"The only thing I hear talked about is a general lack of respect for government and courts, a gradual cynicism," said Constance Dove, executive director of the California Judges Association. "There was an unwillingness to just accept the past and do things the way they've always been done."

With two decades of accumulated baggage dragging down public respect for the judiciary, George's precautions in advance of the 1998 confirmation vote seemed not only prudent, but indeed almost essential, especially in light of the court's decision to overturn the abortion parental consent law. Abortion foes strategized that they needed

only to cajole another 15 percent or so to join the 35 percent expected to vote "no" on all judges. Yet George came out of the election smelling like a rose, and with scarcely an arrow removed from his quiver. Moreover, judicial candidates took care of business up and down the ballot by margins that hadn't been seen since the mid-1970s.

Explanations for the sudden surge of voter goodwill toward judicial candidates vary. The conservatives who led the anti-Bird crusade in the 1970s and 1980s say the high numbers reflect their success in forcing governors to pay closer attention to the anti-crime credentials of their judicial appointees. That gubernatorial attention resulted in justices more willing to impose the death penalty, an issue that has traditionally been a political litmus test not only for judicial nominees but gubernatorial candidates as well. Conservatives believe the "weeding out" of judges ap-



Ron George, current Supreme Court Chief Justice

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se Bird, 1985

**"The only thing I hear talked about is a
general lack of respect
for government and courts,
a gradual cynicism."**

— Constance Dove, California Judges Association

pointed by former Governor Jerry Brown has returned the courts to the comfortable anonymity they enjoyed prior to the Brown-era appointments.

will face the kind of blind skepticism they confronted during the leaner years. There is still about a 25 percent automatic "no" out there in judicial races, and the prospect of another three to five percent who might object to judges whose names indicate that he or she may be a member of a racial minority. But with judicial terms no longer spelled out on the ballot, and the anti-crime fervor that spawned "Three Strikes" clearly ebbing, most see relatively easy confirmation votes for the foreseeable future.

"Unless something happens that causes the crime rate to go up," said Temple, "our anticipation that [judicial approval rates] will be low has changed. No longer will judges feel like they have to run a huge campaign just to keep their job." 

Charles M. Price is a professor of political science at California State University, Chico. Comments on this article may be sent to edit@statenet.com.

Post-Bird era is sedate

"They became less of a subject of notoriety," said Richardson. "The press paid a lot less attention."

Some court experts also point to a subtle but important procedural change that took place in 1998. In the 1994 campaign, the ballot statement for judicial nominees included specific reference to the length of their terms. Those, such as Supreme Court justices, who were running for 12-year terms ran consistently below 60 percent, while those running for shorter four- or eight-year terms got anywhere from 62 to 70 percent approval. At the urging of the state judges' association, those term references were removed from the ballot statements in 1998. Dove says that change, and an increase in the amount of information available to voters — via the ballot pamphlet and the Internet — increased the electorate's comfort level with the nominees.

"The Secretary of State was extremely cooperative," said Dove. "They put out a booklet of information, and set up the web site. Judges themselves also made more of an effort to inform voters."

Most political experts, however, believe the renaissance enjoyed by judicial candidates was triggered by many of the same forces that helped propel the concomitant revival in the fortunes of experienced and incumbent politicians: The good times were rolling. George's political consultant, Richard Temple, says the decline in the crime rate and the positive economy made it easier for judicial candidates to do well. "The crime rate is the Number One issue when it comes to judge races," said Temple. "People look to law enforcement and judges to keep us safe. When things are going well on that front, they're happy."

"The public's vote is based mainly on whether voters are basically satisfied with the direction the state's going," added GOP political consultant Tony Quinn. "In 1998, partisan incumbents did well and so did judicial incumbents."

Given the experience of the two decades leading up to 1998's resurgence, few court watchers are ready to proclaim that the era of "robe rage" among voters is over. But many believe the 1998 campaign did help judicial candidates turn the corner, and made it less likely that judges

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Pulling back the curtain on a reformer

This summer, California became a sort of test market for John McCain, the Arizona senator who wants to live in the White House, and who urgently needs some way to turn America's attention from that Texas guy with the household name.

He hit on something: Why not establish himself the "idea" candidate, one presumably more high-minded than George W. Bush?

Starting in San Diego, the Republican politician began airing television ads knocking the "big-money special interests" that stand in the way of lowering your taxes, bettering your schools and making your government more efficient. He bemoaned the wealthy fat cats who buy political influence by pouring money into campaigns.

He told reporters that the real detriment to government reform are the folks who exploit loopholes in gift-giving laws so they can sway politicians' votes.

Well, talk is cheap.

Presidential campaigns are not. McCain is one of the few White House contenders with serious fundraising capabilities. And it's not because he's holding himself to standards much higher than those of his competitors. True, McCain has been a notable champion of campaign-finance reform. His primary target is "soft money," which is how big companies and industries circumvent the law's limits on gifts to candidates. Instead, they give boatloads of money to political parties, which turn around and spend it indirectly on candidates.

So McCain has vowed that if he is the GOP presidential nominee, he will not take soft money from his party. It is a laudable way for McCain to avoid the perception that he is beholden to companies such as, say, BellSouth Corporation—which last election cycle gave nearly \$400,000 to the Republican Party.

But there are other ways to skin a cat.

BellSouth—with 88,450 employees and \$23.1 billion in revenues—is the world's ninth-largest telephone company. It regularly does business before the Senate Commerce Committee, which wields great power over the telecommunications industry, and whose chairman is John McCain. Under the law, BellSouth's PAC can give McCain \$5,000 for his presidential race, and no more. But the company's employees can give money. And there's no limit on the number who can give, so

long as they donate no more than \$1,000 each.

And that's what happened. Employees at BellSouth have given McCain a combined \$24,750 for his presidential race. Almost all that money was collected at an April cocktail reception in Atlanta, which BellSouth employees attended after getting invitations from company CEO Duane Ackerman.

In the world of political fundraising, this big batch of contributions—delivered all at the same time and from employees of the same company—is known as "bundling." McCain has taken other large bundles from the employees of US West Inc., Viacom Inc., Wall Street investment bank Goldman, Sachs & Co., and computer company Microsoft Corp. In all, McCain took more than \$235,000 from the employees of only 10 companies, many of whom wrote their checks on the same date, or within a few days of one another.

In fact, the senator is described as one of the campaign's top recipients of bundled contributions by the Center for Responsive Politics, a leading watchdog of political gift-giving.

The McCain campaign argues that the gifts do not fall under the strict legal definition of "bundling"—which is when one person collects checks from a number of other people, then delivers the money to a candidate.

But in the political world, "bundling" is a term commonly used for any practice that involves coordinated contributions from the employees of a single company or industry. And it's something reformers have said must change, because it is one way corporations can buy influence.

In fact, McCain himself once tried to make it illegal for corporate representatives to collect and deliver a bunch of donations from company employees. He dropped the idea after critics argued his plan was unconstitutional.

Most presidential campaigns participate in some form of bundling. It is perfectly legal.

But only McCain has told Americans that his campaign-finance reform crusade is one of the biggest reasons they should choose him over his competitors. 🏠

Contributing Editor Dana Wilkie is the Washington correspondent for the San Diego Union Tribune and Copley News Service. Comments may be sent to edit@statenet.com.

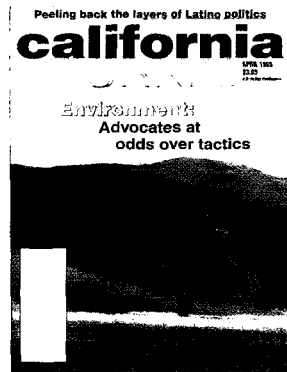
McCain took more than \$235,000 from the employees of only 10 companies, many of whom wrote their checks on the same date, or within a few days of one another.

by Dana Wilkie



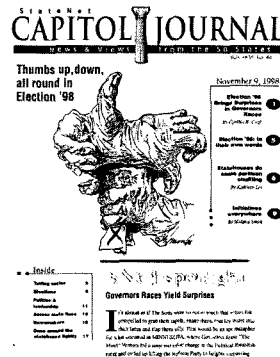
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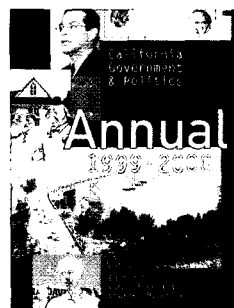
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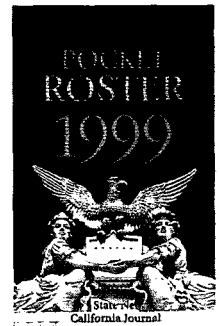
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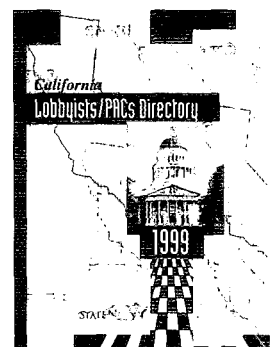


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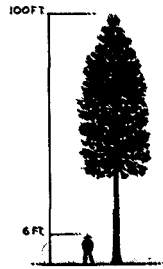


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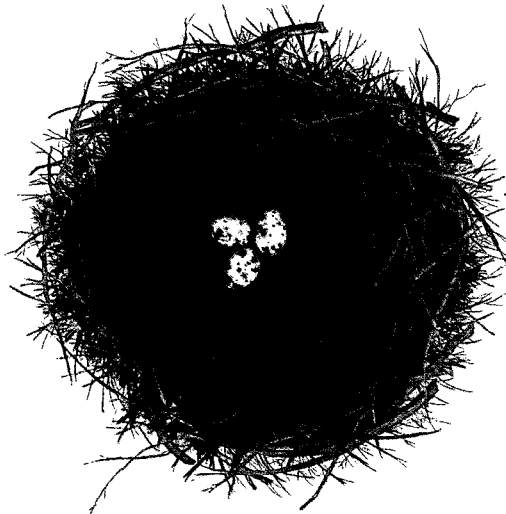
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